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ABSTRACT

As part of an ongoing effort to examine the quality of the New York State educational system, the State Senate Task Force on Critical Problems has compiled this report on the relationship between the nonpublic school sector and the state, as a basis for formulating consistent and effective educational policies. The first section examines why nonpublic education is an emerging issue. The distinguishing features of nonpublic education are discussed, along with a historical background, the controversy between public and nonpublic education, and the implications of current trends for the future. The second section, "What Is the Nature of Nonpublic Education in New York State?" provides demographic data, a breakdown of religious affiliations, and projects of nonpublic school growth, along with a comparison of New York's enrollment and related figures to national averages and a discussion of broader issues. The third section describes the legal aspects of New York's relation to nonpublic education, including such issues as public aid to nonpublic schools, state regulation, and statutory law. The fourth section discusses the policies of the state with respect to nonpublic schools, and the fifth section provides six case studies illustrating the relationship between local school districts and nonpublic schools. The sixth section discusses implications of these findings, including possible courses of action, quality assurance, and fiscal support. Five appendixes are included, providing pertinent documentation.  
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# EDUCATIONAL PARTNERSHIP

## Nonpublic and Public Elementary and Secondary Education in New York State

December 1983



Task Force on Critical Problems  
New York State Senate  
Albany, New York

EA 017 317

# **EDUCATIONAL PARTNERSHIP:**

## **Nonpublic and Public Elementary and Secondary Education in New York State**

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## TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	1
INTRODUCTION.....	1
WHY IS NONPUBLIC EDUCATION AN EMERGING ISSUE?.....	7
<u>What Distinguishes Nonpublic from Public Schools     in New York State.....</u>	9
<u>Historical Background.....</u>	11
<u>The Controversy Between Public and Nonpublic Education.....</u>	14
<u>Implications for Nonpublic Education in New York.....</u>	23
WHAT IS THE NATURE OF NONPUBLIC EDUCATION IN NEW YORK STATE?.....	25
<u>A Foggy Picture.....</u>	28
<u>How Does New York Compare to National Averages?.....</u>	39
<u>The Broader Nonpublic School Issues.....</u>	40
WHAT ARE THE LEGAL ASPECTS OF NEW YORK'S RELATIONSHIP TO NONPUBLIC EDUCATION?.....	43
<u>Public Aid to Nonpublic Schools.....</u>	45
<u>State Regulation of Nonpublic Education.....</u>	50
<u>New York State Statutes and Challenges.....</u>	56
<u>Conclusion.....</u>	59
NONPUBLIC EDUCATION POLICIES: A BAROMETRIC READING OF HIGHS AND LOWS.....	61
WHAT IS THE RELATIONSHIP BETWEEN NEW YORK STATE AND ITS NONPUBLIC SCHOOLS?.....	63
<u>Types of Nonpublic School Aid.....</u>	64
<u>Funds and Accountability.....</u>	70

<u>Comparison to Other States</u> .....	73
<u>The Eye of the Storm: Equivalency of Instruction</u> .....	76
<u>Funding Versus Control: A Paradoxical Issue</u> .....	90
WHAT IS THE RELATIONSHIP BETWEEN LOCAL SCHOOL DISTRICTS AND NONPUBLIC SCHOOLS?..... 91	
<u>Case Study Approach</u> .....	92
<u>Syracuse: A Big Five City School District</u> .....	93
<u>Plattsburgh: A Small City School District</u> .....	95
<u>Middle Country: A Suburban/Commuter School District</u> .....	99
<u>Schroon Lake Central School District</u> .....	102
<u>Hudson Falls Central School District</u> .....	105
<u>Granville Central School District: A Synopsis</u> .....	106
<u>What is a Christian Fundamentalist School?</u> .....	107
<u>What the Case Studies Tell Us</u> .....	109
WHAT ARE THE IMPLICATIONS FOR NEW YORK? ..... 113	
<u>Courses of Action</u> .....	115
<u>Quality Assurance</u> .....	117
<u>To What Degree Does New York State Fiscally Support Nonpublic Education?</u> .....	118
<u>What Quality Assurances Can the State Expect from the Nonpublic Sector?</u> .....	121
<u>What Can Be Done to Improve Quality Assurance in Nonpublic Education?</u> .....	122
<u>Conclusion</u> .....	127
FOOTNOTES.....	131

APPENDICES.....	139
APPENDIX A: BASIC EDUCATIONAL DATA SYSTEMS (BEDS).....	141
APPENDIX B: CHAPTERS 507 AND 508 OF THE LAWS OF 1974.....	145
APPENDIX C: CORRESPONDENCE REGARDING AGE OF ADMISSION TO KINDERGARTEN.....	149
APPENDIX D: NONPUBLIC SCHOOL EQUIVALENCY SCHOOL VISITATION DISCUSSION GUIDE.....	153
APPENDIX E: SCIENCE SELF-PAC.....	161



## **EXECUTIVE SUMMARY**

## EXECUTIVE SUMMARY

New York, like the rest of the nation, is seriously examining the quality of its educational system. This self-examination is the result of the findings of numerous national reports criticizing the quality of American education. In response, New York State has set a course for upgrading its elementary and secondary academic standards through a comprehensive program of improved educational quality. As the State embarks on its mission of educational excellence, serious attention is directed toward the relationship between the nonpublic school sector and the State. Recognizing that both public and non-public schools have an important stake in these efforts, does the State have a right to expect equivalent quality standards from both sectors? Does educational quality mean essentially the same regardless of the type of schools attended by the State's children? Unfortunately, these questions remain largely unanswered. New York does not have an accurate picture of what encompasses nonpublic elementary and secondary education in the State. The task of formulating consistent and effective educational policies is practically impossible because too little is known about the nonpublic school sector in New York. Compilation of more complete nonpublic school information is necessary and vital if the State is to resolve this controversy.

## STATUS OF THE PARTNERSHIP

The promotion and support of two educational sectors, public and non-public, has been fundamental State policy for the past 200 years. Nonpublic elementary and secondary schools in New York play a significant role in offering diverse educational opportunities to the State's children as well as providing parents with an alternative to public education. The nonpublic alternative is a viable one as evidenced by its success in competing for the State's shrinking pool of students. Nearly 600,000 students, or 17.5 percent of New York's total enrollment, attend nonpublic schools.

New York has helped to maintain a healthy nonpublic educational sector by financially assisting nonpublic schools in return for assurances that State-determined academic standards equivalent to those mandated for public schools are met. It should be a mutually benefitting arrangement--State support for non-public education in return for nonpublic school support of academic standards established by the State. Statutorily, the State has exclusive responsibility for educating its citizenry under the State's compulsory attendance laws. In this regard it also has assumed responsibility for establishing the minimum levels of what that education should be. Regardless of the legal responsibilities, some nonpublic schools contest the State's oversight jurisdiction. Therefore, this partnership of mutual support appears to be incomplete.

This lack of mutual support comes at a time critical in the State's educational improvement efforts. No longer can education be taken for granted. Merely "going to school" does not guarantee that the best possible education, suited to the contemporary needs of the State and nation, is offered. Parents want to know how well schools are educating their children.

The first step in determining how well schools educate students is to examine the State's standards for academic excellence. New York State has an established set of academic and citizenship standards providing for what it considers to be adequate skills and core knowledge. However, existing curricular standards are being reviewed. The New York State Regents' proposed Action Plan to Improve Elementary and Secondary Education Results recommends the stiffening of academic requirements in both elementary and secondary schools.

The second step in measuring educational quality is to discover how well current academic standards meet the State's educational goals and objectives. This is primarily accomplished by measuring student performance outcomes through New York's statewide system of standardized testing.

The State has included the nonpublic sector in its expectations for academic standards. Local school districts are held accountable to the State for assuring that nonpublic schools in their respective districts provide a standard of instruction equivalent to that provided by public schools. However, this equivalency of instruction responsibility is not applied nor conformed to consistently. In addition, the State has mandated that all schools participate in a standardized testing program approved by the New York State Commissioner of Education. Because this testing mandate is not strictly enforced in the non-public school sector, information regarding nonpublic school student performance outcomes is inadequate and unreliable. Absent are assessment data which ensure the curricular credibility of some nonpublic schools as well as assure that nonpublic school student performance is at least equivalent to public school student performance. Equivalency of instruction is a key issue in nonpublic education in New York State today.

## NONPUBLIC EDUCATION: AN EMERGING ISSUE

New York's first effort to educate children was through a system of private, church-affiliated schools. Since that time two sectors have emerged, public and nonpublic, to serve the State in educating elementary and secondary school students. These two sectors have clashed occasionally over constitutional questions regarding the separation of church and state. Today, the focus of controversy extends beyond the legal, definitive problem of "separation of church and state" and enters into encroachment issues. Competition for dollars and students exacerbates this problem. The controversy rests on two questions:

- How does the State perceive its role in supporting and promoting nonpublic elementary and secondary schools?
- How does the State perceive nonpublic schools in fulfilling their role of educating students in programs equivalent to those in the nonpublic sector?

Several very significant educational trends have served to focus renewed interest on nonpublic education.

- Public attitudes toward education are changing. According to recent public surveys there has been a general loss of confidence in the public school system. Regardless of the validity of the perceived weaknesses of public schools, greater interest is being shown by many parents in selecting an alternative nonpublic school for their children.
- Increased competition for educational dollars at the local level has forced schools to constantly seek funding through increases in local property taxes. This procedure of fiscal promotion often results in poor relations between local property tax payers and the schools.
- A recent flood of national reports has riveted the country's attention to the shortcomings in American education. Both the quality and performance of education are being questioned. Parents are demanding that schools provide quality education, preferably one that will equip their children with marketable skills. These reports have been the main catalyst for making educational quality and performance a major national issue today.
- Declining student enrollments have plagued the State since the early 1970's. New York State Department of Education (SED) projections indicate that enrollments will continue to decline throughout the 1980's resulting in an additional 23.3 percent drop during the decade. Declining enrollments mean that schools will compete more openly for students and dollars. Whether public or nonpublic, a school's clientele--the students--represents the financial base upon which it operates.
- The 1980's is witnessing a public outcry for a return to the "basics". This return has been precipitated by the public's concern over the quality of education. The "basics" reflect the public's desire for schools to focus strongly on academics and citizenship in a more structured, disciplined school environment.
- Tuition tax credits and deductions give parents of nonpublic school students relief on their personal income taxes for eligible educational expenses. Recent federal legislation, combined with the 1983 Supreme Court decision rendered in Mueller vs. Allen supporting Minnesota's tuition tax deductions for educational expenses of both public and nonpublic school students, has stirred up interest in the feasibility of tuition tax credits and deductions in New York.

If the foregoing attitudinal, enrollment and assistance trends continue, New York's nonpublic educational system can be expected to increase in size and scope. This growth will generate increased competition between the State's public and nonpublic elementary and secondary schools which cannot be ignored by the State's policymakers.

#### **ANALYSIS OF THE NONPUBLIC EDUCATION ISSUE**

What is the current relationship between New York State and its non-public elementary and secondary schools? For the answer, this study utilized four different analytical approaches.

## **Demographic Data**

First, an examination was made of demographic data collected by SED describing various aspects of nonpublic education, such as student enrollment figures and the classification scheme used for categorizing nonpublic schools. According to the data available in SED, the nonpublic school sector is successfully competing with public schools for students. Enrollment increases are exceptionally large in nontraditional, religious-oriented schools while a general decline is being experienced in traditional catholic school enrollment.

Unfortunately, indepth demographic analyses are difficult due to the State's inadequate data base for nonpublic schools. Current weaknesses include inconsistencies in data reporting by year as well as across State agency lines. The SED classification scheme for categorizing types of nonpublic schools is confusing. Further, data are not collected or analyzed according to important indices such as income, sex, race, religion, number of graduates, standardized testing scores or public assistance allocations. Until these weaknesses are rectified, demographic trends cannot be used as partial indicators of significant shifts in public attitudes and support for nonpublic schools.

## **Judicial Decisions**

Second, the status of nonpublic education in New York was assessed by reviewing the significant judicial decisions made by the U.S. Supreme Court as well as decisions adjudicated at the State level. This review focused on two types of cases: public assistance to nonpublic schools and State regulation of nonpublic schools.

The issue of public assistance to nonpublic schools continues to plague the courts. A series of U.S. Supreme Court decisions has brought into clearer focus where funding lines can be drawn. The Court has attempted to establish a "test" to determine where sectarian begins and nonsectarian ends. However, a careful review of 13 significant U.S. Supreme Court cases, as well as many lower court cases, reflects confusion in separating out sectarian and secular intent in program funding.

Due to New York State's compulsory education law, responsibility for educating all students rests exclusively on the State. This responsibility has been tested repeatedly in New York's judicial system resulting in decisions upholding the State's rights to assume such responsibility. What has been lacking, however, are agreements as to the extent of this responsibility vis-a-vis nonpublic schools. No clear, consistent policy regarding the State's regulation of nonpublic schools has been established. It is important to note that New York State has, over the past 20 years, taken aggressive stances in supporting nonpublic education through the enactment of legislation subsidizing nonpublic schools. Often, New York statutes have been challenged before the U.S. Supreme Court, serving as the benchmark cases for determining the constitutionality of similar statutes in other states.

## **State Assistance and Regulation**

Third, again emphasizing public assistance and State regulation issues, nonpublic schools were analyzed according to public assistance allocations, existing statutes and State agency regulations, rules and guidelines. Overall, \$166 million in State and federal funds were dispersed to nonpublic schools in New York State in 1981-82. The \$143 million in State revenues amounted to an

average of \$248 in indirect subsidies for each nonpublic school student. Other 1981-82 spending figures are also relevant in interpreting nonpublic school funding.

- New York State appropriated \$4.2 billion in education aid for elementary and secondary schools. Only \$143 million, or 3 percent, went to nonpublic schools.
- New York State received \$615 million in federal assistance to schools. Only \$23 million, or 4 percent, went to nonpublic schools.
- Nonpublic school enrollment represented 17.5 percent of the total school enrollment in the State. However, nonpublic schools did not come close to receiving this percentage of either State or federal assistance.

State law mandates the following requirements regarding nonpublic schools:

- every nonpublic school must submit a fire inspection report annually and conduct fire drills (Education Law, Section 807-2);
- attendance records must be kept (Education Law Sections 3024, 3025, 3211);
- children enrolled in the school must comply with immunization records (Public Health Law, Section 2164);
- certain State mandated tests as determined by the Commissioner of Education must be administered if a school is to be registered by the Board of Regents (Education Law, Section 209); and
- nonpublic school students must receive substantially equivalent instruction to that provided by the public schools in that district (Education Law, Section 3204) (13).

This last "equivalency of instruction" standard has plagued the educational community since its inception. The problem is twofold: who decides upon an acceptable standard of "substantially equivalent instruction" and who enforces the standard? It is the equivalency of instruction issue which strains the partnership between public and nonpublic schools.

### Local School District Impact

In order to complete the analysis, the relationship between nonpublic and public schools was examined from the local school district perspective. Interviews held in the six school districts included in this study confirm that the controversy surrounding the relationship between public and nonpublic education touches many school districts across the State, regardless of size or location. The case studies also illustrate three relevant points important in understanding the controversies.

- The particular school composition within the community, public versus nonpublic, affects the degree to which regulatory problems exist.

- Greater competition for students between sectors heightens the intensity of the controversies.
- The personalities of the school administrators are a key element in determining whether or not successful resolutions to many public/nonpublic problems occur.

remedies In interviews with local school district officials the following for improved public/nonpublic school relationships were suggested:

- the need for SED's regulations to be more specific, primarily in the area of criteria for minimum standards in measuring educational equivalency;
- the promulgation of rules strictly enforced by SED regarding the procedures for establishing new schools and determining equivalency of instruction;
- the need to transfer responsibility for determining equivalency of instruction from the local school districts to SED or, at least, to have SED give the local school district more support in terms of providing comprehensive, standard guidelines for determining equivalency;
- the need for increased communication between SED and local school district authorities, as well as between public and nonpublic school administrators; and
- the creation of an arbitration board or panel, composed of members from each sector of the school community, to hear cases involving equivalency questions prior to the case reaching Family Court.

### A PICTURE EMERGES

When these four analyses are combined, a composite picture emerges indicating where problems and weaknesses exist in the current relationship and suggesting reasons why these problems will not disappear in the near future. The picture shows:

- the haphazard and unreliable method used by SED to collect and analyze nonpublic school data;
- due to the diverse nature of nonpublic education, inconsistencies exist in the degree to which the State enforces mandatory statewide elementary and secondary testing programs;
- except for fire and safety regulations, the State appears impotent in its ability to establish and enforce nonpublic school reporting and curricular standards;
- although New York State law requires that equivalency of instruction be assured to nonpublic school students, enforcement of SED guidelines as well as the determination of equivalency measurements are left exclusively to the local school districts with little direct assistance or guidance by SED; and

- the recent increase in the number of Christian Fundamentalist schools across the State compounds the quality assurance problem due to their refusal to provide access to information about their students.

## Courses of Action

The State has three possible courses of action it can take in response to nonpublic school issue. First, it can choose to do nothing and ignore the controversy. This approach assumes that the problem either is not worthy of attention or else will disappear in time. Second, it can clarify and strengthen the existing policies and put into effect a means of improved enforcement. This assumes that the State is on the right course but merely needs to keep up the momentum. Finally, it can choose to remove those statutes, regulations and agency guidelines which permit the State to involve itself in nonpublic education. For example, it can amend or remove its compulsory attendance laws as well as its equivalency of instruction mandate. This approach assumes that the State will no longer be responsible for those students outside the public school sector.

If the middle course is chosen, New York State will be put to the test in its ability to continue to financially support two separate educational sectors while ensuring that the highest quality in education is available to all its children. The spiraling level of competition for funds and students could make this test a difficult one. Choosing the middle road means that the State would have to respond financially by:

- increasing its spending in support of nonpublic schools by increasing general fund expenditures for all educational purposes;
- increasing its spending in support of nonpublic schools without increasing general fund expenditures, thereby taking away funds usually set aside for public school aid; or
- decreasing or maintaining its spending levels even if such actions jeopardize the stabilization or growth of nonpublic education.

The middle road also means responding to the regulation issue by:

- requiring that nonpublic schools, regardless of the level of aid received, be regulated more closely to assure that equivalency of instruction occurs;
- maintaining a "laissez faire" attitude toward regulatory questions regarding equivalency of instruction, regardless of the State's position on spending, thereby generating judicial questions of separation of church and state; or
- examining the current regulatory process, and, without making substantial changes in the degree of regulation, strengthen the State's enforcement procedures on existing controls, especially regarding equivalency of instruction issues.

## **Quality Assurance: The Key Ingredient**

What can be done to improve quality assurance in nonpublic education? This report has identified three areas which require attention:

- the current system of classifying the demographic characteristics of New York's nonpublic schools;
- the equivalency of instruction process between public and non-public academic programs; and
- the measurements used in assessing pupil achievements in non-public schools.

For each of these three areas, this report outlines possible choices for action which would improve quality assurance in nonpublic education. One of these would be to expand and strengthen the existing system for classifying demographic characteristics of nonpublic schools. The State also has a choice to:

- continue yet strengthen the current method of quality measurement by focusing on local school district enforcement of equivalency of instruction as it applies to comparability of curriculum;
- discontinue the current method of quality measurement and focus on student performance outcomes reflected through a statewide program of standardized testing which includes nonpublic schools; or
- develop a two-prong measurement approach focusing on the comparability of curriculum at the local school district level as well as student performance at the State level.

The most important message conveyed throughout this report is that every child in New York deserves the best education possible. The State has a responsibility to assure its residents that upon completion of high school, each child has had an unequivocal opportunity to master basic skills and core knowledge areas. Eventually, today's children become tomorrow's adults...members of New York's diverse "community of people." The State must be sure that the "community" is composed of the best and the brightest; secure that it has provided an unparalleled educational experience to all New Yorkers regardless of their public or nonpublic school background.

With educators calling for further discussion and debate on educational reform, what role will the nonpublic schools play in reform efforts in New York? Realistically, can the nonpublic school sector be neglected if the State is to successfully forge a partnership of educational excellence. These two questions are urgently waiting to be answered.

## **INTRODUCTION**

## INTRODUCTION

New York schools, like those in the rest of the nation, now find themselves in a controversy that may well change the way children are educated. The controversy has been precipitated by a combination of societal pressures resulting in a rising tide of critical reports on the quality of education today. It is no wonder that a renewal of concern regarding New York State's assurances of quality in its educational system has surfaced.

Educating New York's children has been and continues to be a prodigious enterprise. Approximately 3.2 million students attend New York's 7,000 schools. Of this extraordinarily large number, over 17 percent, or 600,000 students, are enrolled in nonpublic schools. The nonpublic school sector, large in comparison to other states, represents one of this State's most notable achievements--its commitment to and support of a pluralistic educational system which meets the needs of its diverse citizens. The nonpublic school sector, like its public school counterpart, has served the State well in educating its students, in building upon new foundations of knowledge, and in promoting service to the community. Understandably, the most recent wave of criticism questioning the effectiveness of education in today's high technology society strikes at the very heart of the Empire State's commitment to quality assurance in both public and nonpublic education.

One very important measure of quality assurance in the State's educational system is reflected in its standardized testing programs. New York requires its public schools to administer a battery of tests from kindergarten through grade 12. The scores produced from this comprehensive evaluation are invaluable as the State attempts to assess and improve upon its educational programs.

As the State embarks on its mission of determining quality assurance and instituting educational reform, it must inevitably confront two general policy concerns:

- how the State perceives its own role in supporting and promoting nonpublic education at the elementary and secondary school levels; and
- how the State perceives the role of nonpublic education, in partnership with public education, in fulfilling its goal of educational excellence.

These two complex matters regarding the status of nonpublic education in New York set the stage for an intensive analysis of the myriad of sensitive issues that will confront the State for the remainder of the decade. Three specific issues emanating from these two general policy concerns are targeted for examination. The following three interrelated questions identify these issues:

- To what degree does New York State fiscally support nonpublic education?
- What quality assurances can the State expect from the nonpublic sector?
- What can be done to improve quality assurance in nonpublic education?

These three questions are answered in the conclusion of this report.

Long heralded as the nation's leader in educational excellence in both the public and nonpublic sectors, New York State has confronted similar questions as these in the past. Its response has been to placate, yet support, both sectors by providing increased financial assistance in return for increased regulatory control over such expenditures. However, in the 1980's, the State finds itself encompassed by a host of social, economic and political factors which, singularly or as a package, influence both the direction and the degree to which the State can respond. Included in these factors are declining student enrollments in elementary and secondary schools, public attitudes critical of education, a return to educational "basics" emphasizing the 3 R's and discipline, a diminishing federal role in financing education, an increased interest in supporting nonpublic education through tuition tax credits and deductions, and recordbreaking levels of high unemployment. Each of these factors contributes to

the discussion surrounding New York State's public policies for nonpublic education.

At stake are fundamental educational principles which, depending upon State-level actions, can change the sensitive balance which currently exists between public and nonpublic education. Treading very cautiously, the State has over the years increasingly absorbed more of the costs incurred by nonpublic schools in educating the State's children. The degree to which the State is within its constitutional boundaries to absorb these costs is being tested repeatedly in the courts. If the State foresees continued assumption of costs, it must be able to closely estimate the impact of increased support on the total educational system in the State.

The trade-off in New York's commitment to a limited policy of financial assistance to nonpublic education has been the requirement that nonpublic schools account for their expenditures through various oversight controls. However, effectuating oversight controls over nonpublic school operations has not been consistently applied. The State's equivalency of instruction mandate requiring local school district level implementation serves as a good example of existing policy vagueness and inconsistent application of oversight measures.

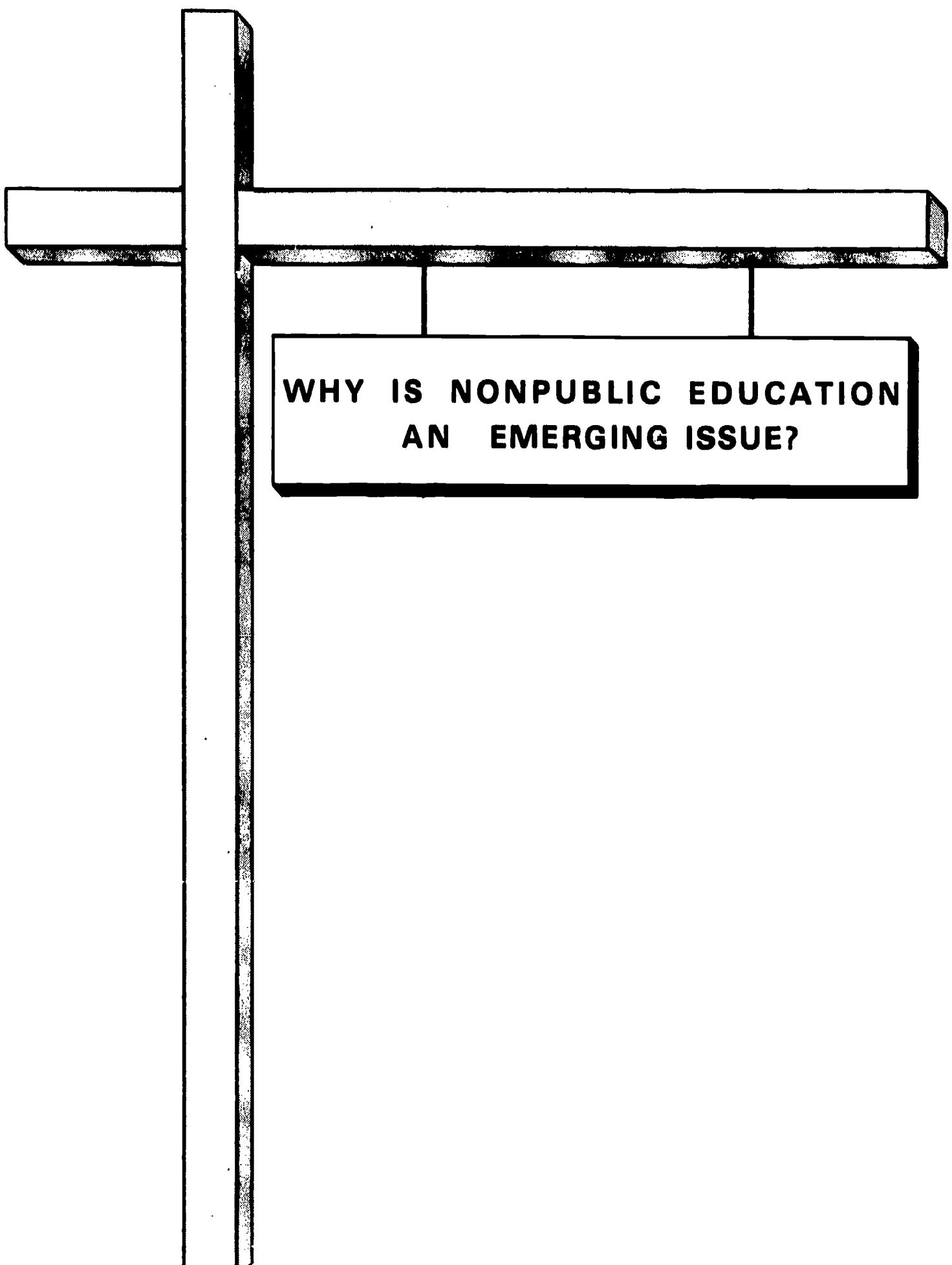
Another important issue is the growing number of nonpublic schools in New York, specifically Christian Fundamentalist schools, which reject any form of State involvement in their operations and often refuse to provide to local school district authorities information about their enrollments and programs. This total rejection of oversight authority exemplifies the extreme constitutionally based argument that the rights of the student supersede the rights of the State due to the religious doctrine of the school.

In response to apparent strains in the State/public/nonpublic educational partnership, the Senate Task Force on Critical Problems sought to conduct a complete assessment of the existing relationship. The information generated from the following six questions provided the framework for a comprehensive, indepth analysis of the State's public/nonpublic school relationship and supplied answers to the three major policy questions addressed in this report.

- Why is nonpublic education an emerging issue?
- What is the nature of nonpublic education in New York?

- What are the legal aspects of New York's relationship to non-public education?
- What is the relationship between New York State and its non-public schools?
- What is the relationship between local school districts and nonpublic schools?
- What are the implications for New York?

Each of these questions is addressed in the chapters that follow. The answer to each respective question is thoroughly discussed and laid out for scrutiny. This report in no way contains all the components necessary to forecast future conditions in education. It does, however, provide a first step in the analysis of the emerging issues surrounding nonpublic education. To date, the State has been without such an analysis. The report attempts to answer each of the six questions: first, by locating information relevant to each question; second, by synthesizing and analyzing the information; and finally, by interpreting how the information best answers each question.



**WHY IS NONPUBLIC EDUCATION  
AN EMERGING ISSUE?**

## **WHY IS NONPUBLIC EDUCATION AN EMERGING ISSUE?**

A recent resurgence of interest and growth in nonpublic education (K-12) in New York State is heightening competition between the State's public and nonpublic elementary and secondary schools. This renewal of interest is precipitated by the claims of the New York State Education Department that nonpublic schools now educate 17.5 percent of all K-12 students in the State, up from 15.6 percent in 1977 (1). Converted to raw numbers, this means that approximately 600,000 students attend nonpublic schools in New York State. Education forecasters predict that this growth pattern will continue through 1986, reaching a level of 18.8 percent (2).

To gain greater insight into the scope of nonpublic educational issues, the reader should first become cognizant of the overall social context in which nonpublic education finds itself today in New York State. This chapter describes various social, political and economic pressures which can be attributed to the genesis of the issues. Additionally, the chapter recounts briefly the historical development of nonpublic education in New York from colonial days to the present. Finally, several policy implications which may result as an outgrowth of the issues are suggested.

## **WHAT DISTINGUISHES NONPUBLIC FROM PUBLIC SCHOOLS IN NEW YORK STATE?**

The New York State Education Department (SED) defines a nonpublic school as any school other than public being operated in accordance with the compulsory education law (3). Nonpublic schools include both religious-affiliated (sectarian) and nonreligious (secular) institutions. A more accurate way to finitely distinguish the differences between these two educational sectors is displayed in Table 1. Here, the distinctions encompass financial, educational and regulatory differences.

**TABLE 1**  
**The Differences Between Public and Nonpublic Schools**

Public	Nonpublic
Supported by public monies.	Supported by private contributions, student tuition and public monies
Must accept all students	Require admission standards, selective
Must serve children with handicapping conditions	Do not have to serve children with handicapping conditions
Must follow due process laws for suspending students	Do not have to follow due process laws, they can permanently dismiss students who are disruptive or who do not meet academic standards
Must have a 180 day school calendar	Not required to have a 180 day school calendar
Offer high school diplomas	Some nonpublic schools do not offer diploma programs
Must meet registration guidelines imposed by SED	Do not need to be registered
Must submit detailed accounting of student, faculty and financial statistics to SED through the Basic Educational Data System (BEDS) Program (See Appendix A)	Do not have to submit information about school population, finances, etc.
Must participate in health, fire and safety programs	Should participate in health, fire and safety programs--some exceptions made
Must employ State-certified teachers and administrators, except where State law permits, such as coaches	No certification requirements necessary for school personnel
Must remain nonsectarian--separation of church and State	89 percent religious affiliation: runs the gamut from traditional religious institutions and preparatory schools for the wealthy to quasi-religious programs and the new Christian Fundamentalist program
Must meet minimum instructional requirements as established by the Board of Regents and SED	No instructional requirements necessary

As evidenced from the list in Table 1, three major substantive differences exist between the two sectors:

- the degree to which each sector relies on public monies;
- the degree to which each sector determines curricular and regulatory standards; and
- the degree to which each sector may include sectarian programs.

Each of these three differences continues to be challenged and interpreted by the courts and the State Education Department. The key to understanding why these differences constantly require interpretation centers around the words "the degree to which," thus making the task of establishing definitive, universal judgments nearly impossible. As the next section points out, this issue is not new. It has existed since the inception of public education in New York State.

## HISTORICAL BACKGROUND

As in other parts of Colonial America, New York's schools were largely the products of religious and social forces stemming from the main country origin of the colonists. In 1674, the English took permanent possession of the New York Colony and established a school system geared toward aristocratic endeavors. These schools, both sectarian and secular, were the forerunners to today's nonpublic schools. By 1784, however, the Legislature of the new Commonwealth of New York created a system of education under the auspices of the Regents of the University of the State of New York. The Regents were authorized to charter and control higher and secondary education in the State. This included all instruction at the secondary and post secondary level because schooling beyond the primary grades was entirely under the private domain.

At the same time as the State began assuming the function of educational coordinator, the policy of universal education took root. In 1795, the New York Legislature passed an act "for the purpose of encouraging and maintaining schools in the several cities and towns in which the children of the inhabitants shall be instructed in the English language or be taught English grammar, arithmetic, mathematics, and such branches of knowledge as are more useful and necessary to complete a good English education." (XIV) These common schools, or public education, were supported through annual appropriations made by the State.

In 1812, due to the increased number of public and nonpublic schools burgeoning across the State, a law was passed establishing school districts and a new State-level official, the superintendent of common schools. In 1854, the Legislature created an independent Department of Public Instruction, headed by a superintendent. Now two separate school systems were operating and controlling education in New York, the Board of Regents and the State Department of Public Instruction for common schools.

As the public school system grew, spurred by the philosophical ideal of universal education, a clash became inevitable. In order to reconcile this conflict, a unification act was passed in 1904 combining both autonomous units into one with a Commissioner of Education as the executive officer. The Regents retained their powers relative to higher education while the Commissioner of Education was delegated authority over elementary and secondary education. Within this amalgamation and evaluation process in the State's school system, the nonpublic schools were able to maintain their own degree of autonomy. They were separated from the mainstream of public education under a laissez faire attitude by educators and lawmakers alike. This dual system has been reinforced time and time again by the Legislature and the judicial system. Each system's end is to educate children, but each identifies different means to accomplish this end.

As these two school systems developed in the State, a series of debates occurred simultaneously concerning the relationship between the State and its nonpublic school sector. It began with an amendment to Article IX of the State's Constitution in 1894. Section 4 was added which stated:

No aid in denominational schools.--§ 4. Neither the State nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.

Known as the Blaine Amendment, it set the stage for a debate which continues today. Interestingly, the Blaine Amendment was named for Congressman James G. Blaine from Maine who, in 1875, proposed an amendment to the federal Constitution at the request of President Grant. The amendment would have added language to the Constitution to prevent assistance of any kind by the federal government to institutions under religious auspices. It almost passed both houses at the federal level. New York's Constitutional Convention of 1894

adopted Resolution 16, known as the "Blaine Amendment," thereby preventing the State from publicly assisting nonpublic schools. It was ratified by the general electorate (4).

The most recent legislative debate over this amendment occurred during New York's Constitutional Convention in 1967. Although the amendment had been changed in 1938 to allow for public assistance for the transportation costs of nonpublic school students, an unsuccessful effort was made in the 1967 Convention to repeal the entire section and to refer all decisions regarding the question to the First Amendment of the federal Constitution. The basis for the argument to eliminate the Blaine Amendment was as follows:

Restrictions in the New York Constitution upon the relationship of church and State, in education, over and above those imposed by the First Amendment principles, impose upon education in New York a double standard.

At the present time we find that artificial structures and meaningless accommodations must be developed in order to carry out effective programs under two differing standards of church-state relationships (5).

The general argument at the Convention in support of retaining the Blaine Amendment was best expressed by the following:

Our situation today is that various groups, which have a special interest because of their private religious schools, are engaged in an all-out effort to eliminate from our State Constitution the historic provision which prohibits this State from giving aid, directly or indirectly, to religious schools. Substituting the Federal First Amendment in the belief that there is room for ambiguity under what is known as the "child benefit" theory is unacceptable and threatening to:

- our religious freedom and separation of church and State;
- the future of the American public school;
- the peace and harmony of our communities;
- the freedom of our political life from religious polarization;
- racial integration of neighborhoods and schools; and
- the partnership role shared by State government in education (6).

On May 25, 1967, the New York State Board of Regents adopted by a vote of 10 to 5 the following statement with respect to the Blaine Amendment:

The Board of Regents believes that the New York State Constitution should affirm the principle of separation of church and state, but that such statement of principle should not deny to the Legislature the right to provide such support of secular education under appropriate public accountability for the benefit of pupils and students in educational institutions of the State of New York, and will not contravene the First Amendment to the United States Constitution (7).

Both the Legislature and the governing body of the State's school system have had a troublesome time wrestling with this issue. Today, these same arguments can be heard both inside and outside the halls of the State Capitol. Although the State has cautiously expanded its fiscal responsibility for non-public schools, how far can it go before it infringes upon separation of church and State issues?

### THE CONTROVERSY BETWEEN PUBLIC AND NONPUBLIC EDUCATION

Nonpublic schools, the first educational enterprises established by New York's earliest settlers for religious purposes, were the only schools available for students until the advent of the Regents of the University of the State of New York in the late 1700's. As mentioned in the previous section, these two school systems have clashed on several occasions, primarily over constitutional interpretations regarding separation of church and state issues. However, the central problem today goes beyond the legal, definitive problem of "separation of church and state" and enters into encroachment issues and increasing competition. There are essentially two public policy questions affecting nonpublic education: whether, how and to what extent to aid it financially; and whether, how and to what extent to regulate it.

This controversy is complex and includes, but is not limited to, legislative conflicts. Controversy annually occurs as the Legislature, in carrying out its constitutional responsibility for funding education, attempts to address the needs of the nonpublic sector as well as the public one. In doing so, New York has been able in the past to provide funds to both sectors as a matter of necessity.

Today, several very significant educational trends have served to fuel this controversy and to focus renewed interest on nonpublic education:

- changing public attitudes toward education;
- increased competition for State dollars;
- increased emphasis on quality;
- declining student enrollments;
- a return to the basics;
- the recent research findings stemming from comparative studies between public and nonpublic schools; and
- the resurgence of interest in tuition tax credits and deductions.

Each of these trends is discussed in detail in the following pages.

### **Changing Public Attitudes Toward Education**

The following statements, made by parents surveyed in the 1982 Gallup Poll of Education, characterize some of the criticisms leveled against public education today (8).

- Public schools are not good enough anymore.
- Public schools lack the discipline that is a key factor in creating a learning climate. They do not educate well enough to get students into good colleges so they can get good jobs.
- Public schools do not stress the values parents want teachers to instill in their children.

Whether these charges are correct or not, many parents apparently feel that the public schools are not giving their children the best education possible.

According to the 14th Annual Gallup Poll of Education taken in 1982, the American people still believe in the importance of education. But, nearly half would send their children to private schools if money were no object (9). What were the reasons given for this choice? As in the 1981 poll, discipline in the public schools was ranked as the most serious weakness of public schools by 70 percent of those responding. Much of the concern over discipline is attributed to the public's perceived school environment of lawlessness and loss of control by teachers--problems regarded as synonymous with unsafe schools, even

though the majority of schools are probably not dangerous (10). Along with a lack of discipline, 22 percent of the respondents said a lack of financial support was a major problem for their local schools, up from 12 percent in 1981. Twenty percent mentioned drugs in the schools; 11 percent pointed to poor standards and 10 percent cited the difficulty of getting good teachers (11).

These criticisms add up to a general loss of confidence by many parents in the public school system. This sense of dissatisfaction was confirmed by a New York Times poll. Of 3,500 suburban New York residents questioned, nearly half said they either had no or very little confidence in public education. Public schools ranked eighth in a list of what the respondents said they liked most about their communities (12). Current public attitudes toward public education are important reflectors for educators and policymakers who must respond to pressures for educational change and improvement. Regardless of the validity of these perceived weaknesses in public schools, they are generating greater interest by many parents in selecting an alternative nonpublic school system over correcting the problems in the public school sector (13).

### **Increased Competition for Dollars**

Public schools rely almost exclusively on local property taxes and state aid for their subsistence. Local property taxes must increase each year in order to keep pace with rising educational expenses. Local property taxpayers' resentment against school budgets is keenly felt. Statewide, 17.8 percent of all 1982-83 school budgets were initially rejected by local taxpayers (14). Although total dollars in state aid have increased recently, now representing 40.2 percent of all monies going into public education, increases over the last ten years have not kept pace with increases in educational expenses (15). In any case, public schools must constantly seek funds at the local level. Often, this procedure of fiscal promotion generates poor relations between local property taxpayers, who often do not have children attending public schools, and the schools supported by their taxes. With the recent dissatisfaction expressed by the public regarding public school programs, public attitudes toward those programs degenerate further.

### **Increased Emphasis on Quality**

Parents have always wanted the best possible educational experience for their children usually with the expectation that it will increase their chances

for success in the job market. Many parents are turning to nonpublic schools for this experience despite their expense. In 1981, the median cost for a year at a nonsectarian boarding school affiliated with the National Association of Independent Schools was \$6,159; for a day school it was \$3,196 (16). However, many parents feel that nonpublic schools offer smaller classes, stricter discipline and more rigorous instruction, necessary components for increasing a student's chances for entering college after high school graduation. A rationale prevails that such expenses are worthwhile investments in the long run for their children.

Regardless of whether parents place their children in public or non-public schools, they are increasingly adamant that the schools provide quality education, preferably one that will equip their children with marketable skills. Schools in both sectors are feeling the pressures and are attempting to meet these demands by beefing up their college preparatory programs. The New York Education Department's recently revamped student competency test is one example of this upgrading. Students must have a proficiency in basic skills (communication, mathematics) before they receive their high school diplomas. In addition, public schools in New York State now offer gifted and talented programs for those students exhibiting exceptional skills. In an era of declining student enrollments, both educational sectors are focusing on methods by which students and parents will be satisfied with quality programs and preparation geared to the development of marketable skills or college entrance after graduation.

### **Declining Student Enrollments**

New York State Education Department projections indicate that student enrollments in New York schools will continue to decline throughout the 1980's and will result in an additional 23.3 percent decrease from its 1979 level (17). Table 2 displays the trend in student enrollment decline since the 1972-73 school year.

Enrollment in elementary and secondary schools increased annually during the 1960's. By the early 1970's, enrollment began to decline. This decrease in student populations is attributable to reductions in the State's birth rate and out-migration from the State.

Declining enrollments mean that schools will compete more openly for students. Whether public or nonpublic, a school's clientele--the students--represents the financial basis upon which it operates. Whether financed by state aid or student tuition, the number of pupils enrolled in a program or facility directly affects the school's ability to support itself and its level of cur-

**Table 2**  
**NYS Student Enrollment in Public Schools K-12 (18)**

Year	Total Pupil Population	Percent Change in Pupil Population Since 1972-73
1972-73*	3,474,000	----
1973-74	3,427,560	-1.4
1974-75	3,401,636	-2.2
1975-76	3,382,369	-2.7
1976-77	3,307,231	-4.9
1977-78	3,189,781	-8.3
1978-79	3,060,911	-12.0
1979-80	2,935,764	-15.5
1980-81	2,838,393	-18.3
1981-82	2,748,397	-20.9
1982-83	2,683,598	-22.8

\*Base Year

ricular programming. Therefore, enrollment can play a very important role in determining the quantity and quality of programs a school can offer. As the population pool of students in the State continues to decline, both educational sectors are looking very carefully at the impact of this decline on their ability to sustain the quantity and quality of their educational offerings. Each perceives the need to maintain its current level of programming and to minimize the fiscal effects created by the student population decline. When statistics reveal an internal migration within the State's student population pool--as with the present trend of public school students transferring to nonpublic schools--concern immediately rises.

Therefore, declining enrollments have several implications for New York's educational climate.

- An overall decline in the student population pool means shrinking educational dollars and programs for the future educational system.
- Internal migration from the public school sector to the non-public sector places additional stress on the public sector to generate funds for program maintenance.
- As the nonpublic school sector increases its percentage of the State's school population base, its responsibilities in educating greater numbers of students increase.

As this demographic picture reveals, the fiscal reverberations felt by both public and nonpublic schools of declining enrollments echoes across the State.

### Return to the Basics

The decade of the 1980's is witnessing a public outcry for a return to the basics. This reinstitution of "basics" in education encompasses three things:

- the demise of the permissive educational policies of the 1960's and 1970's;
- the return to a strong academic emphasis on the "3 R's," reading, 'riting and 'rithmetic; and
- more discipline and structure in schools.

This return has been precipitated by the perception of the general public that a "decline" has occurred in public education. More specifically, the decline is one of performance and achievement in traditional academic areas. Computer literacy may be in vogue, but the "3 R's" still dominate the public's perception of where performance and achievement have slipped. Most often, the measure used to determine whether or not students are achieving a basic education is through a series of educational testing programs, usually statewide standardized tests. Test scores generally have been declining since the early 1970's. This decline has generated much concern and has added to the thrust to "tighten up" the curriculum.

The attitudes of the public reflect a need to combine basics with more discipline, or structure. A corollary of the basics and discipline theme is a belief in the need for more homework. In short, the permissive educational trends of the 1960's and 1970's appear to be in reversal. Learning may be fun for some, but it is work for most.

This "back to basics" trend has been felt by school districts throughout the State. Suffolk County serves as a good example of how this trend is affecting educational programs. In Suffolk during 1976-1982, enrollment in church-run schools increased from 851 to 2,474 (19). In this county on Long Island, three new schools recently opened. Each new school includes prayers and devotion as an integral part of the curriculum. The reasons typically given for the creation of these schools included a feeling that public schools have become too undisciplined and too secular, and that this has resulted in a weakening of

the country's moral fiber. "For years our public school systems taught moral principles, but now that has tremendously disappeared," said the Reverend John Mike Thomas, pastor of Port Washington's First Baptist Church and head of one of the new schools. "The church-run school can bring back a regimentation that can bring our country back." (20)

While all three schools are similar in their approach toward moral education, they differ in secular subjects.

- In one school, students use self-instructional materials developed by a Texas-based international publishing house. Every course is built on the biblical tenet that God created the world. No teachers are salaried.
- At another school, students follow a State curriculum program which had been modified to ensure that texts contain nothing contradictory to biblical teachings.
- The third school uses State materials. About half the curriculum is devoted to religious studies.

According to SED Assistant Commissioner for Nonpublic Schools, this increase in religious-sponsored schools has not created problems. "The Board of Regents and the Department have always supported the diversity that exists in New York." (21) Even within the nonpublic school religious sector, debate goes on over the degree to which these schools have the freedom to offer any curriculum they wish. But many see the emergence of these schools as a serious threat to public education and the right of the State to assure equivalency of instruction to all its students, both in the public and nonpublic school sectors.

### **Research Findings on Nonpublic Education**

A number of important educational studies and national reports on educational quality and performance have surfaced since 1980. These reports have given educational critics the ammunition necessary to charge that education is failing to provide the best learning experiences for today's highly complex society. The reports have been the main catalyst for making educational quality and performance a major national issue today. Four of the major reports released this year are listed below.

- A Nation At Risk: The Imperative for Educational Reforms was prepared by the National Commission on Excellence in Education. This report contains the famous quote: "If an unfriendly foreign power had attempted to impose on America, the mediocre

educational performance that exists today, we might have viewed it as an act of war." This report set the stage for calling attention to educational quality in the United States (22).

- America's Competitive Challenge: The Need for a National Response was written by the Business/Higher Education Forum. The report emphasizes the strong connection between a worldwide competitive economy and domestic education. This report is much wider ranging and more economically oriented than A Nation at Risk (23).
- Action for Excellence was completed by the Education Commission of the States' Task Force on Education for Economic Growth. This report outlines an eight-point action plan. "The challenge is not simply to better educate our elite, but to raise both the floor and ceiling of achievement in America." (24)
- Need for a New National Defense Education Act was released by the Council of Chief State School Officers. Briefly, the report pursues the theme "that the problems of improving mathematics and science instruction, and foreign language education can be most effectively addressed at the nationwide level by Federal action" (25).

A number of comparative studies on nonpublic education have also been completed, beginning a series of debates regarding the quality of nonpublic education versus public education. Three of these are described here.

- Public and Private Schools was a 1981 report prepared for the National Center for Education Statistics (NCES) by James Coleman, Thomas Hoffer, and Sally Kilgore. The study based its analysis on a survey administered to 58,000 sophomore and senior students in 1,015 public and private high schools. The Coleman report concludes that private schools produce better cognitive (intellectual) outcomes than do public schools (26).
- Minority Students in Catholic Secondary Schools was a 1982 report by Father Andrew Greeley which asserts that the academic achievement of minority students is higher than that of public school minority students (27).
- National Assessment of Educational Programs (NAEP Report), released in 1982, differs from the Coleman and Greeley studies. It found that nonpublic school students outperform public school students but that those differences are regionally biased (28).

#### **Tuition Tax Credits and Deductions**

Tuition tax credits give parents of nonpublic school students credit for eligible educational expenses on their personal income taxes. Proposals to

provide federal support for education through the income tax system extend back to the 1950's. Various states, including New York, also have had such legislation on the books until recently. However, several court cases have eliminated or challenged many state tuition tax credit laws based on the Constitutional argument of separation of church and state. The United States Supreme Court has jumped into the fray over tuition tax credits by ruling on the constitutionality of a Minnesota law that permits parents to take an annual deduction for tuition expenses. Their decision, in June 1983, upheld the Minnesota statute arguing that it served a secular purpose by providing tuition credits to both public and nonpublic schools.

In September, 1982, the United States Senate Finance Committee approved S. 528, a tuition tax credit bill. The bill provides tax credits for tuition payments for students enrolled in private schools, starting with an annual credit of \$100 per student the first year and growing to \$300 per student by the third year (29). The credit would be gradually cut for taxpayers with adjusted gross incomes exceeding \$40,000 a year, and would be eliminated for families with incomes over \$50,000 by 1985. The United States House of Representatives never took up the bill for consideration. The Supreme Court decision regarding the Minnesota tuition tax credit program should give the Reagan Administration additional ammunition to push harder for the passage of a national tuition tax credit program.

New York State Board of Regents Chancellor Willard A. Genrich appointed three Regents to a task force to study the question of tuition tax credits in May of 1982. The committee is studying the constitutionality of giving tax credits to parents who send their children to nonpublic schools. "The Board of Regents has jurisdiction and responsibility to both public and independent elementary and secondary schools of our state" the Chancellor said. "Our policy is to maintain a pluralistic educational system." (30)

At the center of the controversy over tuition tax credits is the issue of public support for nonpublic education. This legislated approach to easing the financial burden for parents of nonpublic school students stirs up considerable anger among public school educators. Public elementary and secondary organizations universally oppose tuition tax credits. These groups argue that funds made available to individuals attending nonpublic institutions would be provided at the expense of public education. According to the New York State United Teachers (NYSUT), tuition tax credits could quintuple the State's subsidy to nonpublic schools. If tuition tax credit legislation is passed, NYSUT esti-

mates show that an additional \$200 million would be distributed in the first year to parents of nonpublic school students in New York and over \$400 million the second year (31). Now that the Supreme Court has ruled favorably on the Minnesota case, the issue will surely set off a series of actions at both the state and federal levels to institute tuition tax credit policies which support the non-public educational sector.

## IMPLICATIONS FOR NONPUBLIC EDUCATION IN NEW YORK

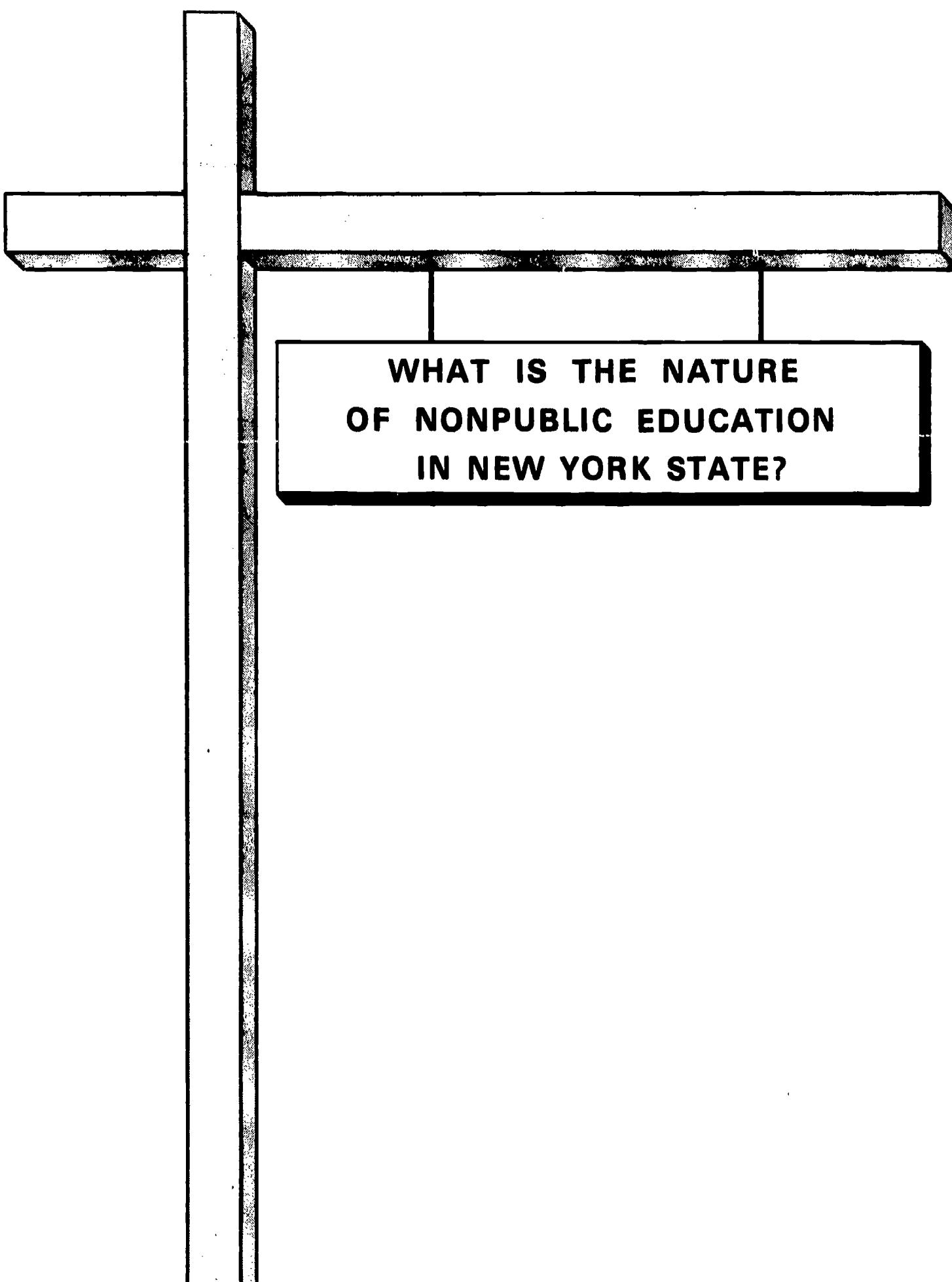
If the foregoing attitudinal, enrollment and assistance trends continue, New York's nonpublic educational system can be expected to increase in size and scope. This growth will generate increased competition between the State's public and nonpublic elementary and secondary schools which cannot be ignored by the State's policymakers. The implications of these conflicts may result in the following:

- on-going controversy between the public and nonpublic school sectors can be expected to increase in intensity;
- more and more will be heard from local public school authorities upset by the fact that the nonpublic school sector is competing more openly for its share of the State's student population pool;
- increased competition for State dollars for education will heighten the tension between public and nonpublic schools;
- nonpublic schools will seek to maintain or increase their level of public assistance while containing or reducing State regulatory initiatives;
- public schools will seek to maintain or increase their share of the State's educational budget while shifting the burden of local control over nonpublic school issues to the State;
- the continued growth of the Christian Fundamentalist schools could result in a substantial proportion of the State's school-age children being involved in educational programs outside the purview of the State's present regulatory provisions;
- constitutional questions related to the separation of church and State will surface more frequently in the form of court tests to determine where the line extends into nonpublic school financing; and
- new controversies will spring forward which will demand that the State satisfy its obligation to ensure that equivalency of

instruction occurs in all nonpublic schools (both registered and nonregistered) before the termination of the student's formal educational experience.

New York State traditionally has been committed to supporting a pluralistic educational system. However, it now faces a new round of debate in which it must clarify what this commitment means in the 1980's. Perhaps the results of this clarification will not significantly change any existing policy, but the process itself may be a healthy one to embark upon. However, the trends creating this resurgence of interest in this controversial issue will not disappear in the near future. Therefore, it is important to look at how the State has responded to the issue in the past and how this response has set precedents for current and future policy deliberations.

The first step necessary for clarifying the issue is to describe and analyze the nonpublic school sector in New York. The next chapter presents a series of facts and figures describing this educational sector exclusively as well as comparatively to the public school sector. This analysis also looks at the changes which have occurred in the nonpublic sector in recent years.



**WHAT IS THE NATURE  
OF NONPUBLIC EDUCATION  
IN NEW YORK STATE?**

## **WHAT IS THE NATURE OF NONPUBLIC EDUCATION IN NEW YORK STATE?**

As of 1982-83 approximately 3.3 million students were enrolled in both public and nonpublic schools, grades K-12, in New York State. Of this total, 17.5 percent, or 570,460 students, were enrolled in nonpublic schools. Using 1977-78 as a baseline year, nonpublic enrollment has increased its share of the State's total enrollment by 1.9 percentage points, up from 15.6 percent (1). Even though at first glance this may not appear to be significant, it must be realized that overall statewide enrollments have shrunk by 14 percent since 1977-78. This contraction has been shared by both the public and nonpublic educational sectors, however, at a vastly disproportionate rate. Nonpublic school enrollment is expected to decline at a much slower rate than public school enrollment. Between 1981-82 and 1988-89, nonpublic school enrollment is expected to decline by one percent, while public school enrollment should decrease by 12 percent (2).

During the last five years, public schools have lost over 377,000 students, or a 12 percent reduction, while nonpublic schools have lost over 13,000 students, or a two percent decline (3). What these figures are suggesting, as indicated in Table 3, is that even in an era of shrinking school enrollments, the nonpublic education sector is not feeling the "pinch" as dramatically as the public education sector is. The data clearly points to increasing competition for students and funds between public and nonpublic elementary and secondary schools.

This data raises two pertinent questions regarding nonpublic education in New York State which this chapter attempts to answer.

- What is the nature of nonpublic education in New York?
- How does it compare nationally in terms of enrollment and institutional growth?

**TABLE 3**  
**Trends of NYS Public and Nonpublic Enrollment in  
 Grades K-12: 1962-63 to 1982-83 (4)**

School Year	Total	Public	Nonpublic	Nonpublic as Percent of Total
1962-63	3,808,168	2,960,568	847,600	22.3%
1967-68	4,209,588	3,325,477	884,111	21.0
1972-73	4,192,834	3,474,392	718,442	17.1
1977-78	3,778,039	3,189,781	588,258	15.6
1978-79	3,644,784	3,060,911	583,873	16.0
1979-80	3,515,949	2,935,764	580,185	16.5
1980-81	3,418,257	2,838,393	579,864	17.0
1981-82	3,324,836	2,748,397	576,439	17.3
1982-83	3,254,058	2,683,598	570,460	17.5

NOTE: The public school enrollment figures reported above do not include students in special classes for handicapped children operated by Boards of Cooperative Educational Services (BOCES).

Until very recently, these questions were either ignored or were too difficult to answer due to the lack of precise demographic data on nonpublic schools. Even with the noticeable increased interest now given to nonpublic education, too often the descriptive data necessary to respond to these questions have not been collected or are not easily accessible for analysis. At this point it is important to construct a profile using available data portraying nonpublic education in New York now and what educational forecasters project its future will be.

#### A FOGGY PICTURE

In order to gain clarity and a better understanding of what encompasses nonpublic education in the State, the analysis is broken down into several component parts, including:

- overall demographic data, including trends for school enrollments, instructional staff and school facilities;

- breakdowns based on denominational and nondenominational affiliations; and
- projections of nonpublic school growth through the remainder of this decade.

### Overall Demographic Descriptors

When examining demographic data on nonpublic schools it is important to keep in mind that nonpublic schools are not required to file information about their populations with any State agency or central clearinghouse. In New York State, Education Department officials claim that their nonpublic school data represents about 95 percent of the nonpublic schools operating in the State (5). Within this limitation, however, several interesting trends emerge in the nonpublic sector.

As evidenced in Table 4, there has been a rapid acceleration in the total number of nonpublic schools in the State since 1977-78. Within the various grade levels, growth seems most apparent in three categories: elementary schools, K-12 schools, and special ungraded schools. These categories become somewhat nebulous when closely examining how they are defined. For instance, there is overlap in grades between what is considered to be elementary, middle, junior high and K-12 schools. With such a confusing classification scheme, one question quickly surfaces. Who determines how schools are classified? The State Education Department? The local school district in which the nonpublic school resides? Or the nonpublic school itself? Perhaps an answer to this question would explain the confusion in overlap. According to SED, the decision is left up to the individual school to select its own classification (6).

Table 5 also reveals a steady growth in instructional personnel in nonpublic schools since 1977-78. Again, these figures represent what each nonpublic school chooses as its method for classifying school personnel. These figures may be less dramatic if schools have included "teacher aids" or volunteers as regular staff. This may occur because many nonpublic schools now claim to have teaching staff which do not receive salary. On the other hand, staff data may be undercounted because New York nonpublic schools are not required to report staffing positions. Again, data fuzziness exists regarding actual numbers and growth trends due to imprecise or inconsistent reporting procedures.

Finally, aggregate enrollment trends in New York's nonpublic sector follow similar patterns with the public school sector. The graph in Figure 1 illustrates how nonpublic and public school enrollments compare between 1962-63 and projected 1988-89. It is interesting to note the following two trends.

**TABLE 4**  
**Number of NYS Nonpublic Schools by Level:**  
**1977-78 to 1982-83 (7)**

Level (1)	Year and Number (2)						Percentage Change 1977-78 to 1982-83
	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	
Elementary Schools	1,319	1,312	1,443	1,469	1,484	1,515	15
Middle Schools	14	15	15	14	14	12	-14
Junior High Schools	5	7	8	5	7	10	100
Junior-Senior High Schools	132	121	74	81	99	96	-27
Senior High Schools	227	249	241	236	215	218	-4
K-12 Schools	92	112	162	212	201	231	151
Special (ungraded) Schools	151	199	205	195	219	216	43
TOTAL	1,940	2,013(3)	2,148	2,212	2,239	2,298	18

(1) The following criteria were used in categorizing schools for this summary:

- Elementary Schools--schools containing at least one grade lower than 6 and no grade higher than 9, except those classified as middle schools.
- Middle Schools--schools having any of the following grade organizations: 5-7, 5-8, 6-8.
- Junior High Schools--schools containing no grades lower than 6 or higher than 9, except for grades 6-8 schools which are classified as middle schools.
- Junior-Senior High Schools--schools containing any grade organization which includes grades both lower and higher than 9, except those which have all of grades Kindergarten through 12.
- Senior High Schools--schools having no grade lower than 9.
- K-12 schools--schools containing all of grades Kindergarten through 12.
- Special (ungraded) Schools--schools containing pupils with special needs who are not classifiable by grade level.

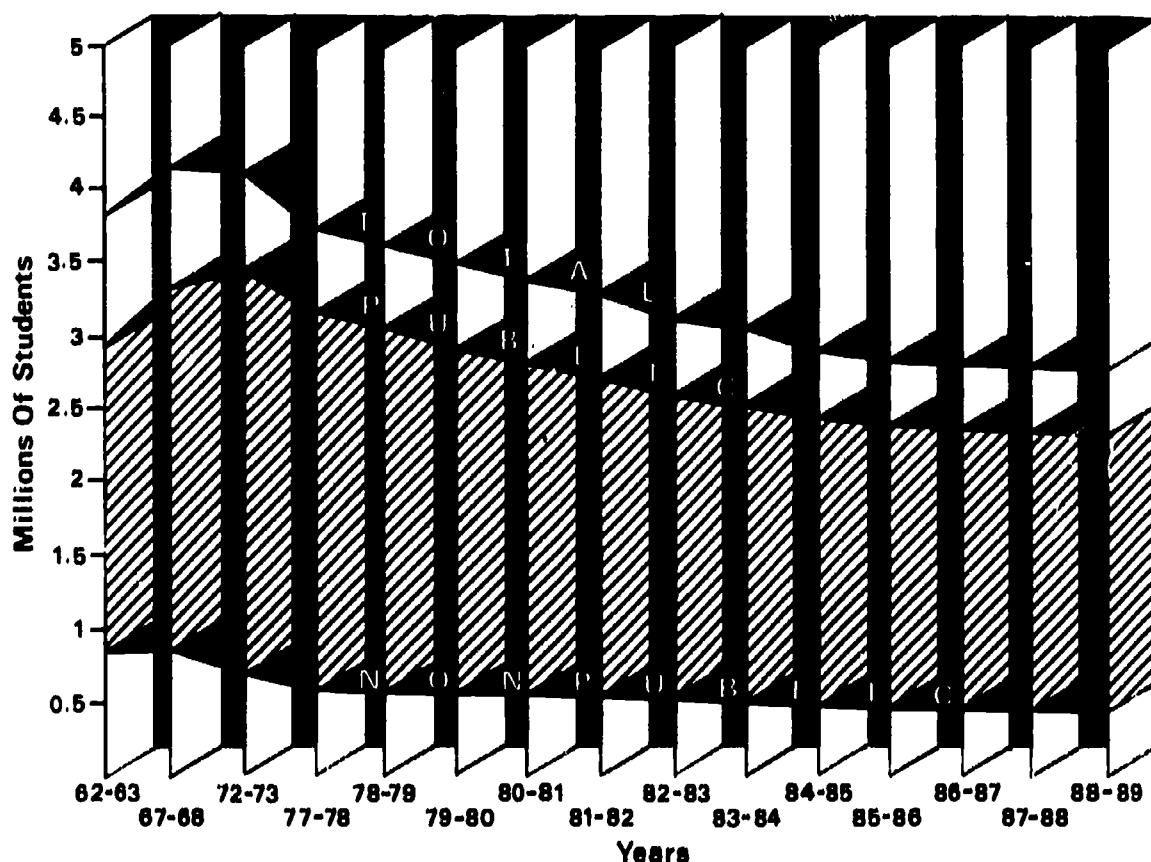
(2) Changes in the number of schools reported for a particular category do not necessarily imply the closing or opening of particular school buildings. The majority of the differences in numbers result from changes in the grades assigned to individual schools. Only the "total" line accurately represents the number of nonpublic schools in operation during a given school year.

(3) The increase from 1977-78 to 1978-79 is caused, in part, by the addition of 64 schools operated by the Department of Mental Hygiene and the Department of Correctional Services.

**TABLE 5**  
**Instructional Staff Trends In NYS Nonpublic Schools:**  
**1977-78 to 1982-83 (8)**

Position	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	Percentage Change 1977-78 to 1982-83
Principals	2,151	2,222	2,242	2,404	2,443	2,551	19
Assistant Principals, Supervisors & Department Heads	1,765	1,878	2,049	2,317	2,391	2,580	46
Classroom Teachers	33,162	34,108	35,346	35,850	36,457	37,270	12
Other Professional Positions	5,085	5,060	5,992	6,935	6,893	7,008	38
<b>TOTAL</b>	<b>42,163</b>	<b>43,268</b>	<b>45,629</b>	<b>47,506</b>	<b>48,184</b>	<b>49,409</b>	<b>17</b>

**FIGURE 1**  
**Comparison of NYS Public and Nonpublic School Enrollments:**  
**1962-63 to 1988-89 (9)**



- Between 1962 and 1977, the nonpublic education's share of total school enrollments declined sharply. This could be explained by the resurgence of interest in public education as evidenced by the amounts of money directed toward education from the federal government through the Elementary and Secondary Education Act coupled with growth of the public school system due to the increased demands placed on it by the "baby boom" numbers.
- Beginning in 1977, the nonpublic school sector began to regain its share of the "student market." This same time period also reflects the period ending the "baby boom" and the levelling off and decline in numbers of students in the State's schools.

### **Denominational and Nondenominational Affiliations**

One of the more interesting characteristics regarding nonpublic education in New York is its diversity. Included under the umbrella classification of "nonpublic" are a host of schools, some of which are religiously affiliated and others are not. The New York State Education Department has a total of eight distinct categories by which it currently places its nonpublic schools. Table 6 illustrates SED's classification scheme. This classification scheme, however, changes when SED presents statistics on both enrollment by school year and grade level. Tables 7 and 8 show how several categories have been changed, making only seven categories for enrollment by year and for enrollment by grade level. Analyzing the figures in Tables 6, 7, and 8, several other important facts emerge.

- Roman Catholic schools comprise 70.2 percent of all recorded nonpublic school students in New York State for 1982-83.
- Nondenominational and Jewish school students make up another 20.4 percent of the total student population.
- The remaining 9.4 percent are spread out among the various religious-based groups and schools operated by the State for special services.

Shifts within these categories become apparent when comparing Table 6 with Table 7. Here, the changes appear to center primarily on Catholic schools and "other religion" schools. Catholic schools have realized tremendous student enrollment declines. On the other hand, "other religion" enrollments have increased by an astounding 365 percent! This phenomenal expansion appears to be increasing at a faster rate in 1982-83 than in 1972-73. What is spearheading

**TABLE 6**  
**Number of Nonpublic Schools by Affiliation in  
 New York State: 1977-78 to 1982-83 (10)**

Group	Number of Schools					
	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83
State Total	1,940	2,015	2,148	2,212	2,239	2,298
Roman Catholic	1,119	1,100	1,094	1,087	1,077	1,071
Jewish	182	185	207	215	215	223
Lutheran	56	56	57	57	58	60
7th Day Adventist	46	45	41	46	45	44
Episcopal	36	36	34	32	32	31
Other Religion (1)	39	39	74	204(4)	233	266
Nondenominational	426	448	531	464(4)	467	494
State/Public Agencies (2)	36	106(3)	110	107	112	109

- (1) Includes the following affiliations with number of schools in parenthesis:  
 Society of Friends (6); Mennonite (20); Islamic (4); Greek Orthodox (12); Russian Orthodox (2); Presbyterian (2); Baptist (60); and Christian Fundamental Schools (127).
- (2) Includes schools operated by the Office of Mental Health, Department of Correctional Services, Division for Youth, State University of New York, City University of New York and State Education Department.
- (3) The increase in this category from 1977-78 to 1978-79 is caused, in part, by the addition of 64 schools operated by the Department of Mental Hygiene and the Department of Correctional Services.
- (4) Changes in these categories are due, in part, to the fact that 127 Christian Fundamental schools which had formerly been reported in the "Nondenominational" category are now reported under "Other Religion."

this growth? Are these figures truly representative of what is happening in nonpublic enrollment in "other religion" groups?

An important event occurred in 1980 when SED reclassified 104 Christian Fundamental schools from their original "nondenominational" status to an "other religion" status. This makes comparisons of enrollment and/or aggregated growth measures between years more difficult to determine. As evidenced in the tables, it is impossible to separate out the 104 reclassified schools from either the "other religion" category or from the "nondenominational" category in 1982-83.

**TABLE 7**  
**NYS Nonpublic School Enrollment by Affiliation**  
**Grades K-12: 1972-73 to 1982-83 (11)**

Group	1972-73	1973-74	1974-75	1975-76	1976-77	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	Percentage Change 1972-73 to 1982-83
STATE TOTAL	718,442	678,553	643,812	621,345	606,210	588,258	569,873	560,185	579,864	576,439	570,460	-21
Roman Catholic	589,366	548,875	512,629	486,819	469,249	450,539	435,877	424,556	418,823	410,496	400,541	-32
Jewish	41,209	43,390	45,515	48,118	47,890	47,404	48,879	52,596	55,617	57,153	59,240	44
Lutheran	10,557	10,341	10,160	10,105	10,187	10,037	10,131	9,934	10,039	10,390	10,540	-1
7th Day Adventist	3,004	2,916	2,961	3,138	3,305	3,207	3,734	3,275	3,542	3,686	3,715	24
Episcopal	6,472	6,331	6,454	6,159	5,847	5,584	5,767	5,811	5,912	5,858	5,896	-9
Other Religion (1)	5,091	5,474	5,863	6,441	6,691	7,108	7,271	9,461	19,197(4)	21,926	23,698	365
Nondenominational (2)	62,743	61,226	60,230	60,565	63,041	64,379(3)	72,214	74,552	66,734(4)	66,932	66,830	7

(1) Includes Society of Friends, Mennonite, Islamic, Greek Orthodox, Russian Orthodox, Presbyterian, Baptist and Christian Fundamental Schools (from 1980-81 on).

(2) Includes Division for Youth schools, State Schools for the blind and deaf, and campus schools operated by the State University of New York, as well as schools operated by the Office of Mental Health, Department of Corrections and DEC from 1977-78 on.

(3) The enrollment increase from 1977-78 to 1978-79 is due, in part, to the addition of 64 schools in this category operated by the Department of Mental Hygiene and the Department of Correctional Services.

(4) Enrollment changes in these categories are due, in part, to the fact that 104 Christian Fundamental schools which had been previously reported in the "Nondenominational" category are now reported under "Other Religion."

**TABLE 8**  
**NYS Nonpublic School Enrollment by Level and Affiliation**  
**Grades K-12: 1982-83 (12)**

	K-6 (1)	7-8	9-12 (2)	Total	Percent of Total
STATE TOTAL	325,161	93,852	151,447	570,460	100.0
Roman Catholic	224,544	69,902	106,095	400,541	70.2
Jewish	40,511	7,807	10,922	59,240	10.4
Lutheran	7,147	2,130	1,263	10,540	1.9
7th Day Adventist	2,491	651	573	3,715	0.7
Episcopal	3,490	1,006	1,400	5,896	1.0
Orthodox	3,194	734	423	4,351	0.8
Baptist	2,969	776	1,058	4,803	0.9
Christian Fundamental	7,924	1,839	1,863	11,626	2.0
Mennonite	533	132	11	676	0.1
Presbyterian	96	2	13	111	*
Society of Friends	723	367	824	1,914	0.3
Islamic	215	2	--	217	*
Nondenominational	30,068	7,740	19,410	57,218	10.0
State/Public Agencies (3)	1,256	764	7,592	9,612	1.7

\*Less than 0.1 percent

(1) Includes ungraded elementary.

(2) Includes ungraded secondary.

(3) Includes schools operated by the Office of Mental Health, Department of Correctional Services, Division for Youth, State University of New York, City University of New York and State Education Department.

This suggests that nondenominational schools have expanded at a faster rate than the 1982-83 figures indicate. A question then arises: How much statistical influence do the additional 104 reclassified fundamentalist schools make under the "other religion" category? It makes the task of analysis difficult when schools and enrollments change in classification status from year to year. When asked why this reclassification occurred, a representative of SED responded:

Due to the large number of inquiries and allegations about the growth in numbers of the Christian Fundamentalist schools in New York since the late 1970's, we had to create a separate category for these schools in order to get a better handle on who they are and where they are (13).

### **Comparison of SED Data to Other Sources**

The National Center for Educational Statistics (NCES) under the United States Department of Education conducted a school survey in 1980-81 of all private schools in the United States. The National Catholic Education Association (NCEA) surveyed all Catholic schools while Evaluation Policy Research Associates surveyed all nonCatholic private schools. The results indicate that, even on this massive scale, the total number of private schools reported by SED may be underestimated by as much as 15 percent and their total enrollment by five percent (14). This underestimation should be kept in mind when examining existing and projected enrollment figures for nonpublic education in New York. The NCES survey reported the figures displayed in Table 9 regarding nonpublic education in New York State (15). When these data are compared to those collected by SED (also shown in Table 9), the following points emerge.

- Population classification schemes, if not consistent or identical, can make the job of substantiating the validity of the data or drawing inferences from the data difficult.
- Reclassification or merging together former single classifications into larger categories disrupts the analysis of long-range population trends.
- The major discrepancies between the two sets of data appear in the categories of Nonchurch Related, Christian, Jewish and Other. Reasons for these discrepancies are unclear unless the classification schemes of each data base were not similar thereby causing different subpopulations to be measured.

TABLE 9

**Comparison of New York State Education Department (SED)  
Nonpublic School Enrollment Data With Those of the National  
Center on Education Statistics (NCES): 1980-1981 (16)**

Categories	NCES	SED	Difference	Percentage Change
Total Nonpublic Enrollment	583,997	576,439	7,558	1.3
Nonchurch Related	71,046	57,767	13,279	18.7
Church Related	512,951	518,672	-5,721	-1.1
Baptist	4,303	4,651	-348	-8.1
Catholic	429,241	410,496	18,745	4.4
Christian	2,336	10,155	-7,819	-334.7
Episcopal	5,296	5,858	-562	-10.6
Jewish	48,130	57,153	-9,023	-18.7
Lutheran	10,916	10,390	526	4.8
Seventh-Day Adventist	3,883	3,686	197	5.1
Other (1)	8,846	16,283	-7,437	-84.1

(1) Includes enrollment in special education and alternative schools.

- The largest discrepancy in numbers occurred in the Christian category. Due to the lack of clarity in distinguishing schools in this category as well as the difficulty often found in obtaining data from these schools, Christian enrollments are tenuously recorded.

Herein lies a problem which cannot continue to be ignored. The collection of reliable data describing the demographic characteristics of nonpublic school students is of vital importance. New York State long ago recognized the importance of collecting concise, accurate and timely data on its public school system. However, it has failed to recognize the similar importance of collecting such consistent data on its nonpublic school system. The Basic Educational Data System (BEDS), employed by SED for the purpose of collecting demographic data from the public schools, has provided valuable information regarding educational trends which can be used to plan for future needs and to recognize existing problems. According to SED, all nonpublic elementary and secondary schools receive BEDS forms to complete. Only minimal descriptive data are requested from the schools. They are strongly encouraged to fill out the forms and return them to SED. If they fail to do so, the only alternative left for SED is to contact

the nonparticipating school by phone and request the BEDS information. This contact is done exclusively through SED's Office for Nonpublic School Services (17).

### Projections for Nonpublic Education in New York

SED has projected that by the school year 1988-89, the total school enrollment in New York State will reach a low of 2,795,556. Table 10 portrays this projected decline for total enrollments as well as for public and nonpublic school populations. This projected decline represents an overall decrease of 23.3 percent since it calculated its original projection in 1979. In order to determine how accurate SED has been in predicting enrollment trends, their 1979-80 to 1982-83 projections are compared in Table 11 to the actual enrollment figures reported in those school years. SED's projections of total and public school enrollments have been very accurate over this three year period. However, the projections of nonpublic school enrollment have been consistently too low and have gotten further off each year. Obviously, the strength of the trend toward an increasingly larger percentage of students attending nonpublic schools has been underestimated.

TABLE 10  
Projections of Public and Nonpublic School Enrollments:  
1982-83 to 1988-89 (18)

Type of School	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	Percentage Change 1982-83 to 1988-89
Public	2,628,449	2,542,710	2,475,287	2,420,930	2,377,155	2,341,588	2,314,610	-12
Nonpublic	524,714	513,152	502,897	495,374	490,265	485,713	480,946	-8
TOTAL	3,153,163	3,055,862	2,978,184	2,916,304	2,867,420	2,827,301	2,795,556	-11

**TABLE 11**  
**Comparison of Projected and Actual Enrollment Figures:**  
**1979-80 to 1982-83 (19)**

	Projected	Actual	Percentage Change from Projected
<b><u>1979-80</u></b>			
TOTAL	3,511,749	3,515,949	0.1
Public	2,947,280	2,935,764	-0.4
Nonpublic	564,469	580,185	2.8
<b><u>1980-81</u></b>			
TOTAL	3,383,463	3,418,257	1.0
Public	2,832,751	2,838,393	0.2
Nonpublic	550,712	579,864	5.3
<b><u>1981-82</u></b>			
TOTAL	3,261,812	3,324,836	1.9
Public	2,724,359	2,748,397	0.9
Nonpublic	537,453	576,439	7.3
<b><u>1982-83</u></b>			
TOTAL	3,153,163	3,254,058	3.2
Public	2,628,449	2,683,598	2.1
Nonpublic	524,714	570,460	8.7

If these figures are relatively accurate, then the data in Table 10 is worth further examination. Unless unpredictable events occur which radically change the projections, nonpublic schools will continue to absorb greater portions of New York's total school population pool.

The data clearly point out that nonpublic schools are rapidly regaining a greater share of the "education market" in terms of enrollment. At the same time that this internal shift is occurring, public monies (state aid) allocated to the public school formerly attended by the student now enrolled in a nonpublic school are no longer received. Monies for transportation, text books, health services and testing are allocated to the nonpublic school. In this instance the public school loses the competition for students and funds. At what point can such an internal shift become fiscally damaging to the local public school district?

These two questions are being addressed not only from a state-level perspective but also in light of national education trends. Aggregate data, based upon national averages for nonpublic education, reveal a similar trend: a

slower rate of decline in nonpublic school populations than that in public schools. Therefore, a cursory look at these national averages may give additional insight into New York State's current experience.

### **HOW DOES NEW YORK COMPARE TO NATIONAL AVERAGES?**

In the Fall of 1980, over five million students attended 21,000 nonpublic elementary and secondary schools in the United States. Nonpublic schools represented nearly 20 percent of the total number of elementary and secondary schools. Other national figures indicate the following (20).

- The five million students enrolled in nonpublic schools comprise nearly 11 percent of total national elementary and secondary enrollment. Compared to New York's 16.9 percent figure in 1980, the national average is below New York's.
- Nonpublic schools employed 281,000 teachers nationwide representing more than 11 percent of total elementary and secondary teachers. New York's nonpublic schools, on the other hand, employed 36,000 teachers, or 18.4 percent of the total number.
- Catholic schools accounted for 46 percent of the total number of nonpublic schools in the nation, while in New York that percentage was 50 percent. In terms of enrollment, Catholic schools represented 63 percent of the nonpublic students nationally, while that figure was 74 percent in New York.

Unfortunately, comparisons beyond those listed above cannot be made. The reason: the data simply is not available. So much emphasis has been placed on public education over the last 20 years and the need to employ sophisticated data collection techniques to keep records of public sector growth, that data on nonpublic schools has either not been collected or not analyzed. Apparently, this neglect cannot continue as more pressure is exerted on policymakers to either increase or decrease their support for nonpublic education. For the policymaker it may mean pitting nonpublic education against public education--a potentially disastrous confrontation for New York State.

### **WHAT DO THE TRENDS TELL US?**

Within the limitations of the data base available, it appears that the nonpublic educational sector in the State is doing very well in its competition with public schools for students. Several religious-oriented, primarily Chris-

tian Fundamentalist Schools, are experiencing exceptionally large increases in enrollments. These schools generally are springing forth as new institutions, while growth is not being experienced by those schools already established. Especially severe has been the decline in Catholic school enrollments throughout the State.

Unfortunately, any further interpretation beyond these very general, superficial analyses is difficult due to data base problems. Until the following data weaknesses are corrected by SED, this problem will continue to plague educators and policymakers alike.

- Nonpublic school categories are not consistent on a year by year basis.
- Nonpublic school categories are not consistent across agency lines.
- Classification schemes are not clearly delineated and understood by all those collecting data.
- Data is not collected and analyzed using any of the following demographic indices:
  - . income, sex and race;
  - . religion;
  - . number of graduates;
  - . statewide test results;
  - . public funds received (both federal and State); and
  - . transfer of students between the public and non-public school sectors.

Until these weaknesses are rectified, demographic trends cannot be used as partial indicators of significant shifts in public attitudes and support for non-public schools.

### THE BROADER NONPUBLIC SCHOOL ISSUES

The foregoing description of New York's nonpublic school system may not engender a feeling of imminent concern and controversy. It should, however, explicitly document the inevitable struggle likely to emerge as public and nonpublic schools compete for students and funds. The data exhibited in this chapter describing nonpublic education in New York State does provide the genesis for several pertinent questions:

- If nonpublic education continues to attract greater numbers of students, should the State become more cognizant of who these students are and where they come from?
- In light of the current national and State concern over the quality of the teaching corps, will the increased demand for teachers in nonpublic school settings jeopardize major efforts to upgrade the performance standards set for teaching in New York State?
- If nonpublic schools continue to increase in number, what building and/or program regulations should the State institute in order to monitor their development?
- If the nonpublic education sector continues to gain a greater share of the "education market" in student enrollments, what fiscal strains will this place at the local school district and State levels?

This last question strikes at the heart of the mounting competition to be dealt with by the local school district administrator making budgetary decisions for his/her district, and also by State decisionmakers confronted with allocating state aid. The long-term fiscal effects of student enrollments in both educational sectors are of prime concern to those who must make the critical choices determining how the State appropriates its educational funding.

The following section of the report examines how the courts have interpreted the relationship between New York and its nonpublic educational sector to date. It explains that even under the existing tenuous arrangement, the State must be constantly alerted to judicial interpretations of questions concerning nonpublic funding versus State control. Questions of interpretation of State and federal laws relating to public assistance and control of nonpublic education certainly will not end now that the Supreme Court has decided favorably on Minnesota's tuition tax deduction law. However, it could set the stage for a new round of arguments challenging where State responsibility and authority end and local nonpublic school autonomy begins.



**WHAT ARE THE LEGAL ASPECTS  
OF NEW YORK'S RELATIONSHIP  
TO NON-PUBLIC EDUCATION?**

## **WHAT ARE THE LEGAL ASPECTS OF NEW YORK'S RELATIONSHIP TO NONPUBLIC EDUCATION?**

States continuously grapple with the relationship between nonpublic education and state regulatory limitations. Policy relationships generally fall into two categories: state aid to nonpublic schools and state regulatory powers over nonpublic education. In order to better understand where these nonpublic educational policies now rest, a chronological review of selected United States Supreme Court cases is presented. Cases are separated into the above two categorical divisions. Finally, a synopsis is presented in the last section of this chapter describing New York State statutes as they relate to nonpublic schools.

### **PUBLIC AID TO NONPUBLIC SCHOOLS**

Historically, the problem of public support for nonpublic schools is directly related to the constitutional issue of separation of church and state. Under New York State's Constitution of 1894, section 4 was added to Article IX restricting the use of public monies for sectarian schools. As described in the first chapter, the Blaine Amendment has been debated in the New York Legislature since its enactment. Proponents for deleting Section 3, Article XI (formerly Section 4, Article IX) from the Constitution argue that it is an interference in the "free exercise of religion clause" of the First Amendment to the Constitution. Those who argue to retain this section base their arguments upon the "establishment clause" of this same First Amendment which prohibits the government from supporting religion. Each side uses the ambiguously stated words in the First Amendment to bolster its arguments. This constitutional ambiguity explains why such a fine line exists between the rights of nonpublic school students to receive public aid for education and the rights of the State's citizenry not to support religious institutions through their tax dollars.

A series of U.S. Supreme Court decisions has brought into clearer focus where the line can be drawn regarding state aid to nonpublic education. The

Court has attempted to resolve the issue by establishing a "test" to determine where sectarian begins and nonsectarian ends. However, as is apparent when scrutinizing the following briefs, the Court has found it difficult to draw a distinct line separating sectarian and secular issues. Thirteen court cases are described in Table 12 and their decisions briefly discussed. For purposes of this report, six of the most significant cases for New York's interests are outlined below.

#### **Everson v. Board of Education: 1947**

The first Supreme Court decision addressing public aid to nonpublic schools occurred in 1947. In Everson, a New Jersey statute reimbursing parents for the costs incurred in transporting their children to nonpublic schools was upheld. The Court argued that it is the state's responsibility to provide educational services to all its residents. If these services--specifically transportation reimbursement for nonpublic education--were denied to religious groups, it would be considered discrimination based upon religion. This would unconstitutionally impair the religious groups' First Amendment right to "free exercise" of religion (1).

#### **Lemon v. Kurtzman: 1971**

The Supreme Court addressed the question of the "establishment clause" in the First Amendment regarding public aid to private education (2). Since a substantial proportion of nonpublic education is composed of sectarian schools, the question of separation of church and state arises. The First Amendment prohibits a state's involvement in church-related programs.

In 1971, the Court rendered its decision on this issue in Lemon v. Kurtzman. It established a "three-prong" test which aid programs must satisfy before they are justifiable. The criteria include the following:

- there must be a secular legislative purpose;
- the principal or primary effect must neither advance nor inhibit religion; and
- the program must not foster excessive government entanglement in religion (3).

TABLE 12

A Synopsis of Supreme Court Decisions on Aid to Nonpublic Education (4)

(1947) Everson v. Board of Education--First Amendment allows parental reimbursement for children's bus fares to parochial schools (as well as public schools).

(1968) Board of Education v. Allen--First Amendment allows state lending of approved textbooks to all students including those in private secondary schools.

(1970) Walz v. Tax Commission--First Amendment allows property tax exemptions to religious organizations.

(1971) Lemon v. Kurtzman--First Amendment does not allow supplementing private school teachers' salaries. Supreme Court composed tripartite test for determination of establishment clause violations:

- 1) secular legislative purpose;
- 2) principal or primary effect must neither advance nor inhibit religion; and
- 3) must not foster excessive governmental entanglement.

(1971) Tilton v. Richardson--First Amendment allows construction grants to sectarian colleges for buildings used exclusively for secular education.

(1973) Committee for Public Education v. Nyquist--First Amendment does not allow income tax deduction to parents for private school tuition; direct dollar grant to private schools for repair and maintenance also held unconstitutional.

(1973) Levitt v. Committee for Public Education--First Amendment does not allow reimbursement to parochial schools for costs of teacher-prepared testing.

(1975) Meek v. Pittenger--First Amendment does not allow Pennsylvania statutes providing instructional materials and equipment to private schools. Ruled that in "religion-pervasive" institutions, secular and religious education were inextricably intertwined so that even aid to the educational function of such schools was forbidden.

(1976) Roemer v. Board of Public Works of Maryland--First Amendment allows subsidies to private colleges or universities for secular educational functions.

(1977) Wolman v. Walter--First Amendment allows most of Ohio's program of direct aid to private schools including textbook loan program, standardized testing, therapeutic and remedial services off premises of parochial schools. First Amendment does not allow program for purchase of instructional materials which could be used for religious instruction, or for payment for pupil field trips.

(1979) Public Funds for Public Schools v. Byrne--First Amendment does not allow income tax deduction to parents for private school tuition.

(1980) Committee for Public Education v. Reagan--First Amendment allows New York's revised and tightened program of direct cash reimbursement to private schools for their administration of state-required and state-prepared testing. Holds that Meek should be read narrowly.

(1983) Mueller v. Allen--First Amendment allows parents of both public and private school children to take tax deductions for costs incurred in schooling.

This case and the Wolman case clearly reaffirm that one aid category in particular, services which qualify as human welfare measures such as health and safety issues, are more likely to be upheld by the Courts.

This Court's decisions contain a common thread to the effect that the provision of health services to all school children--public and nonpublic--does not have the primary effect of aiding religion (5).

#### Meek v. Pittenger: 1975

In this case, the Court struck down two Pennsylvania statutes that provided auxiliary services, instructional materials and equipment and textbooks only to nonpublic schools (6). Most significant is that the Court found that the secular and religious education provided by the nonpublic schools were so intertwined that aid given to the nonreligious functions would be unconstitutional under the "separation" clause. Although this landmark decision was thought to set the stage for discontinuance of any state aid to nonpublic education, this was not to be the case. As described next in the Wolman v. Walter decision, the Court upheld most portions of an Ohio statute that provided direct aid to nonpublic schools for textbooks, standardized testing and scoring services, and diagnostic services.

#### Wolman v. Walter: 1977

In Wolman v. Walter the Supreme Court once again addressed the issue of constitutional boundaries under the First Amendment of public aid programs benefitting sectarian elementary and secondary schools (7). The First Amendment states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." In 1940, the Supreme Court had held that this also applied to the states. Based upon this precedent, the Court upheld most portions of an Ohio statute and found the following to be constitutional:

- the purchase and loan of secular textbooks to nonpublic school children;
- the use by nonpublic school children of state-prepared standardized tests and scoring services;
- the provision of diagnostic speech, hearing and psychological services to nonpublic school children by public school personnel on the nonpublic school premises and

- the provision of a variety of therapeutic and remedial services for nonpublic school students by public school personnel off the nonpublic school premises.

Found to be unconstitutional were:

- the purchase and loan to nonpublic school pupils of sectarian instructional materials and equipment; and
- the provision of transportation for nonpublic school field trips.

#### **Committee for Public Education v. Regan: 1980**

The Court upheld New York's revised and limited statute that provided cash reimbursement to private schools for their administration of State-required and State-prepared testing (8). In two previous cases which involved teacher-prepared testing programs, the Court invalidated the State's reimbursement aid program because there were no assurances that the testing was free of religious content. In Regan the caveat from a prior education case was cited:

The Court has not been blind to the fact that in aiding a religious institution to perform a secular task, the State frees the institution's resources to be put to sectarian ends. If this were impermissible, however, a church could not be protected by the police and fire departments, or have its public sidewalks kept in repair. The Court never has held that religious activities must be discriminated against in this way (9).

#### **Mueller v. Allen: 1983**

Minnesota allows taxpayers, in computing their state income tax, to deduct certain expenses incurred in providing for the education of their children (Minnesota Statute. Section 290.09). The Supreme Court affirmed the ruling of the U.S. Court of Appeals that the Establishment Clause of the First and 14th Amendments to the U.S. Constitution were not abridged by this statute. The Court argued:

Parochial schools, quite apart from their sectarian purpose, have provided an educational alternative for millions of young Americans; they often afford wholesome competition with our public schools; and in some states they relieve substantially the tax burden incident to the operation of public schools (10).

## STATE REGULATION OF NONPUBLIC EDUCATION

Each state has full responsibility for establishing educational policies for its constituents and for prescribing educational requirements as part of this educational obligation. Courts have consistently recognized the states' interests in educating their citizenry. Supreme Court Chief Justice Earl Warren emphasized the significance of education in Brown v. Board of Education (1954):

Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship....In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education (p. 11).

The compulsory education commitments of many states have been challenged on the grounds that state compulsory education requirements violate individual constitutional rights. A series of court cases, beginning in 1925, gradually have illuminated where a state can and cannot extend its authority into nonpublic school matters. These cases are briefly discussed and interpreted in this section.

### LIMITING STATE'S POWER: COMPULSORY EDUCATION Pierce v. Society of Sisters: 1925

In 1925, the Supreme Court struck down an Oregon law that mandated school attendance at public schools exclusively. The Pierce decision recognized the legitimacy of compulsory education, while at the same time recognizing the right of parents to seek alternative forms of education. The decision, however, implied no restriction on state power to reasonably regulate all schools in order to foster an educated citizenry (12).

No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare. (13)

The Pierce decision stands at the heart of many existing state statutes which allow some form of state regulation of educational programs. As described

in Table 13, each of the 50 states has instituted compulsory education laws in concert with specific promulgated restrictions and controls as they relate to nonpublic schools.

**Supporting State's Power: Instruction and Certification  
Board of Education v. Allen: 1968**

This case challenged a New York statute requiring local school boards to purchase and lend textbooks, free of charge, to students in public and non-public schools as part of their complying with the State's compulsory education law. Justice White, writing for the majority, stated:

If the State must satisfy its interest in secular education through the instrument of private schools, it has a proper interest in the manner in which those schools perform their secular educational function. The State may insist, therefore, that attendance at private schools, if it is to satisfy state compulsory attendance laws, be at institutions which provide minimum hours of instruction, employ teachers of specified training, and cover prescribed subjects of instruction (14).

This case reiterated a state's right to enforce appropriate regulations of nonpublic schools in its interest in supporting and promoting an educated citizenry. In addition, the Court recognized the authority of a state to provide for minimum hours of private school instruction. While minimal amounts of instruction in certain subjects may be required, the state may not so completely regulate the use of instructional time that it effectively excludes religious instruction or suffocates the type of independent decisionmaking that nonpublic schools were established to effectuate (15).

**Limiting State's Power: Compulsory Education  
Wisconsin v. Yoder (1972) and State v. Nobel (1980)**

In Wisconsin v. Yoder the Supreme Court exempted certain groups from participation in compulsory educational programs based upon religious objections. In particular, the Amish accepted compulsory school attendance until the eighth grade but then, according to Amish religion, children were required to participate in Amish-led instruction. The Court held that Wisconsin's compulsory attendance law was unconstitutional, but only for certain, select cases. Yoder narrowly states that the state cannot compel school attendance by children where

TABLE 13

## Basic Requirements for Compulsory School Attendance by State (16)

Alabama	A child must "...attend a public school, private school, denominational school, parochial school or be instructed by a competent private tutor...." ALA. CODE Sec. 16-28-3 (1975).
Alaska	Every child between 7 and 16 years of age shall attend school at the public school in the district in which the child resides during each school term. ALASKA STAT. Sec. 14.30.010(a) (Cum. Supp. 1981).
American Samoa	Attendance at a public or private school is required. A.S. CODE ANN. Secs. 16.16, 16.0302 (1981).
Arkansas	Parents "shall send children to a public, private or parochial school...." ARK. STAT. ANN. Sec. 80-1502 (1980).
Arizona	Parents "shall send the child to a school...." ARIZ. REV. STAT. ANN. Sec. 15-801 (1981).
California	The child must attend public school. CAL. EDUC. CODE. Sec. 48200 (West 1978).
Colorado	The child must attend public school. COL. REV. STAT. Sec. 22-33-104(1) (Supp. 1981).
Connecticut	The child must "attend a public day school...unless...receiving equivalent instruction...." CONN. GEN. STAT. ANN. Sec. 10-184 (West Cum. Supp. 1981).
Delaware	The child must attend public school. DEL. CODE ANN. tit. 14, Sec. 2702 (1981).
District of Columbia	The child must attend a public or private school or be "instructed privately," so long as instruction is equivalent to public school instruction. D.C. CODE Sec. 31-201 (1981).
Florida	The child must attend a public or private school, FLA. STAT. ANN. Sec. 232.01 (West Cum. Supp. 1981), or receive instruction at home by a private tutor who meets state board criteria. FLA. STAT. ANN. Sec. 232.02(4) (West 1977).
Georgia	The child must attend public or private school. GA. CODE ANN. Sec. 32-2104 (1980).
Guam	The child may attend public or private school. GUAM GOV'T CODE Sec. 11401 (1970).
Hawaii	Child must attend public or private school. HAWAII REV. STAT. Sec. 298-9 (Supp. 1981).
Idaho	The "parent or guardian...shall cause the child to be instructed in subjects commonly and usually taught in the public schools." "Unless the child is otherwise comparably instructed, as may be determined by the board of trustees...the parent or guardian shall cause the child to attend a public, private or parochial school during a period in each year equal to that in which the public schools are in session." IDAHO CODE Sec. 33-202 (1981).
Illinois	The child is required "to attend some public school...." ILL. ANN. STAT. Ch. 122, Sec. 26-1 (Cum. Supp. 1981).
Indiana	The child "shall attend either a public school...or some other school...open to inspection by state attendance officer." IND. CODE. ANN. Sec. 20-8.1-3-14 (Burns Cum. Supp. 1981).
Iowa	The child is "to attend some public school...or equivalent instruction by a certified teacher elsewhere." IOWA CODE ANN. Sec. 299.1 (West Cum. Supp. 1981).
Kansas	The child is to attend public or private school. KAN. STAT. Sec. 72-1111 (1981).
Kentucky	The child must "attend public or private day school." KY. REV. STAT. ANN. Sec. 159.010 (Bobs Merrill 1980).
Louisiana	The child must "attend public or private day school." LA. REV. STAT. ANN. Sec. 17:221(A). The law also provides, under the definition of the term school, that "(a)solely for purposes of compulsory attendance in a nonpublic school, a child who participates in a home study program approved by the (state board)...shall be considered in attendance at a day school; a home study program shall be approved if it offers a sustained curriculum of a quality at least equal to that offered by public schools at the same grade level." LA. REV. STAT. ANN. Sec. 17:238 (West Supp. 1981).
Maine	The child must attend public school. ME. REV. STAT. ANN. tit. 20, Sec. 911(1) (Supp. 1981).
Maryland	The child "shall attend a public school...unless receiving regular, thorough instruction...in the studies usually taught in the public schools...." MD. EDUC. CODE ANN. Sec. 7-301 (1978).
Massachusetts	The child shall "attend a public day school in said town, or some other day school approved by the school committee." MASS. LAWS Ch. 76, Sec. 1 (West Supp. 1981).
Michigan	The parent "shall send such child to the public schools...." MICH. COMP. LAWS ANN. Sec. 380.1561 (Cum. Supp. 1981).
Minnesota	The child "shall attend a public school, or a private school...." MINN. STAT. ANN. Sec. 120.10 (West Cum. Supp. 1981).
Mississippi	The child "shall attend a public, private or parochial school." MISS. CODE ANN. Sec. 37-13-95 (Cum. Supp. 1981).

**BEST COPY AVAILABLE****TABLE 13 (continued)**

Missouri	The child is "to attend some day school, public, private, parochial or parish." MO. ANN. STAT. Sec. 167.031 (Vernon Cum. Supp. 1981).
Montana	The parent must "cause the child to be instructed in the program prescribed by the (state) board...." MONT. REV. CODE ANN. Sec. 20-5-102 (1981). The parent "shall enroll the child in the school assigned by (the local board)...unless the child is...enrolled in a private institution..." or in another approved program or is exempted for some other reason. MONT. REV. CODES ANN. Sec. 20-5-102(2) (1981).
Nebraska	The child must "attend regularly the public, private, denominational, or parochial day schools each day that such schools are open." NEB. REV. STAT. Sec. 79-202 (1976).
Nevada	The parent must send the child to public school. NEV. REV. STAT. Sec. 392.040(1) (1979).
New Hampshire	The child "shall attend the public school within the district...or an approved private school." N.H. REV. STAT. ANN. Sec. 193.1 (1977).
New Jersey	The child must attend public school or receive "equivalent" instruction. N.J. STAT. ANN. Sec. 18A; 38-25 (West 1968).
New Mexico	The child "shall attend a public school, a private school or a state institution." N.M. STAT. ANN. Sec. 22-12-2 (Supp. 1981).
New York	The child shall "attend at a public school or elsewhere." N.Y. EDUC. LAW Sec. 3204.1 (McKinney 1981).
North Carolina	The parent "shall cause" the child to attend school. The term "school" explicitly includes private schools, but they must have state department of education approved teachers and curricula. N.C. GEN. STAT. Sec. 115C-378 (Cum. Supp. 1981).
North Dakota	The child is to attend public school. N.D. CENT. CODE. Sec. 15-34.1-01 (1981).
Ohio	OHIO REV. CODE Sec. 3321.03 (Page 1981). The parent must cause the child to "attend school...participate in a special education program, or cause him to be otherwise instructed in accordance with law."
Oklahoma	The child is "to attend and comply with the rules of some public, private or other school, unless some other means of education are provided." OKLA. STAT. ANN. tit. 70, Sec. 10-105 (West Cum. Supp. 1981).
Oregon	The child must "attend regularly a public full-time school." OR. REV. STAT. Sec. 339.010 (1979).
Pennsylvania	The child must "attend any school in which the subjects prescribed by the State Council of Education..." are taught. PA. STAT. ANN. tit. 24, Sec. 13-1327 (Purdon Supp. 1981).
Puerto Rico	The child must attend public or private school. P.R. LAWS ANN. tit. 29, Sec. 450 (1966).
Rhode Island	The child must attend a public day school. R.I. GEN. LAWS Sec. 16-19-1 (1981).
South Carolina	The child must "attend a public or private school...or a parochial or denominational school, or other programs which have been approved by the state board of education." S.C. CODE Sec. 59-65-10 (Cum. Supp. 1981).
South Dakota	The child must "attend some public or nonpublic elementary school...." S.D. COMPILED LAWS ANN. Sec. 13-27-1 (Supp. 1981).
Tennessee	The parent must send the child to public or private school. TENN. CODE ANN. Sec. 49-1708 (Bobbs Merrill 1977).
Texas	The child is to "attend the public schools...." TEX. EDUC. CODE ANN. tit. 2, Sec. 21.032 (Vernon Supp. 1981).
Utah	The parent must send the child "to a public or regularly established private school...." UTAH CODE ANN. Sec. 53-24-1 (1970).
Vermont	The child must attend public school. VT. STAT. ANN. tit. 16, Sec. 1121 (Cum. Supp. 1981).
Virginia	The parent must send the child to a public, private or denominational school or have the child taught by a tutor or teacher having the qualifications prescribed by the state board of education and approved by the division superintendent. VA. CODE Sec. 22.1-254 (1980).
Virgin Islands	The child must attend public school. V.I. CODE ANN. tit. 17, Sec. 82 (1967).
Washington	The child is to attend public or private school. WASH. REV. CODE Sec. 28A27.010 (Cum. Supp. 1981).
West Virginia	The West Virginia law is ambiguous in whether "(c)compulsory school attendance" or "compulsory public school attendance" constitute the basic requirement. Both terms are used in W. VA. CODE Sec. 18-8-1 (1977).
Wisconsin	The child must attend public or private school, "unless" excused from the school attendance requirement. WIS. STAT. ANN. Sec. 118.15 (West Supp. 1981-1982).
Wyoming	The child is to attend public or private school. WYO. STAT. Sec. 21-4-102 (1977).

strong religious prohibitions forbid such attendance and where other alternative services are provided.

This same kind of religious-based exemption has been applied to other groups. A more recent application has been used in the establishment of home instruction by parents. In State v. Nobel (1980), the Court found that the state's interest in uniformity in education was not sufficiently compelling to justify enforcement of the attendance law (17).

#### **Supporting State's Power: Curriculum State v. Faith Baptist Church (1981) and Others**

This case involved the use of curricular materials used by Christian Fundamentalist religious schools. The use of the Packet of Accelerated Christian Education (PACE) booklets was at question. This series of booklets, unapproved by the state, serves as the core curriculum for certain Fundamentalist Christian schools in Nebraska. The Nebraska court examined the PACE materials and found them to be adequate. However, the defendant school did not use certified teachers and refused to cooperate in state-mandated reporting requirements, citing Biblical reasons for its refusal. The court did not uphold the defendant's arguments and upheld the state's regulations.

So the courts in Nebraska rejected the school's argument that the state was infringing upon its First Amendment rights to free exercise of religion and its claim of undue intrusion into its school programs. The United States Supreme Court has refused to hear the case. Several of the schools in question, particularly the Faith Baptist Christian School, have been padlocked and shut down. On October 21, 1982, the schools were reopened, indicating a temporary but significant victory for the Fundamentalist Christian proponents. In a ruling by a local county judge, the Faith Baptist Christian School in Louisville, Nebraska, was permitted to reopen. As it now rests, the schools are operating against state laws and regulations (18).

In several other similar cases, State v. Shauer (North Dakota), State v. Kesubaski (Wisconsin) and Hill v. State (Alabama), the courts have upheld the rights of the state to regulate education without it being an interference in religious beliefs.

However, in State v. Whisner (Ohio) the court concluded that Ohio state laws and regulations unduly burdened the free expression of religion in nonpublic schools. State regulations had required nonpublic schools to devote 80 percent

of their time to specific academic instruction and 20 percent to special activities, such as physical education, art and music.

### The Scorecard

Table 14 summarizes how the courts have interpreted various aspects of the nonpublic education issue. Note that frequently a ruling interprets not only as constitutional specific forms of aid but, at the same time, interprets in the same case as unconstitutional uses of the same aid program (for example, see Wolman v. Walter, 1977). Whether or not these decisions have made the task of resolving policy questions regarding nonpublic education easier is difficult to decide. In some cases these decisions seem to distort an already confusing situation by setting up contradictory legal tests. These cases suggest that there are ways in which the State can provide substantial support to its non-

TABLE 14

#### How the U.S. Supreme Court Has Treated Different Forms of Aid to Nonpublic Education (19)

<u>Constitutional</u>	<u>Unconstitutional</u>
Lending of secular textbooks to pupils in private schools (Allen) (Wolman)	Funding to private schools for purchase of instructional materials which could be used for religion (Wolman)
Reimbursement to private schools for cost of administering state prepared and required student tests (Regan)	Reimbursement to private schools for teacher-prepared testing (Levitt I)
Supplying to private schools standardized tests and scoring services (Wolman)	Loaning instructional equipment (such as films, recordings, printed materials) directly to private schools (Meek)
Provision of remedial services and therapy to private school pupils off premises of private schools at "religiously neutral locations" (Wolman)	Provision of auxiliary services (remedial instruction and counseling) on premises of private schools (Meek)
Grants for construction to private colleges for buildings used for exclusively secular education (Tilton)	Grants to parochial schools for maintenance and repair of facilities (Nyquist)
Provision of diagnostic speech and hearing services within private schools (Wolman)	
Property tax exemption for religious organizations (Walz)	
Tuition tax credits to nonpublic school parents only if also applicable to public school parents (Mueller)	Tax deduction to parents only for private school tuition (Nyquist)

public schools. This support, however, must be carefully explained and legislatively designed. An aid program should be easy to supervise in order to avoid separation of church and state conflicts. Safeguards are also needed to guarantee that no fiscal support will go into sectarian programs. It is apparent that general grants-in-aid to nonpublic schools are unconstitutional. In between are a variety of options available for funding. These options must be tested by the courts. Whether or not New York State chooses to wait for this painfully slow judicial process is not clear. As the next section illustrates, New York State has concurrently been attempting to define its role and responsibility to non-public education through its own legislative deliberations and judicial responses.

### **NEW YORK STATE STATUTES AND CHALLENGES**

There has been a common thread weaving together the actions of the New York State Legislature and judicial interpretations of both the State courts and the U.S. Supreme Court regarding nonpublic education. As evidenced in the following chronology of significant legislative actions, New York State has taken an aggressive stance in support of nonpublic education. In several instances this stance has resulted in statutes that were challenged in court suits heard by the U.S. Supreme Court. Where applicable, these challenges have been noted. This list of legislative actions highlights the current statutory status of nonpublic education in New York State (20).

1962	<u>Chapter 521, Records of Attendance Upon Instruction.</u> --The teacher of every minor required by the provision of the compulsory education law to attend schools, must keep an accurate record of the attendance and absence of such minor.
1965	<u>Chapter 320, Textbook Aid to Nonpublic Schools.</u> --This law extended the power of local school district officers to purchase and to loan textbooks in either public or nonpublic schools in their respective districts. Textbook aid was set at \$10 per pupil in grades seven to twelve.  <u>Constitutional:</u> 1968 <i>Board of Education v. Allen</i> .--The First Amendment of the U.S. Constitution allows state lending of approved textbooks to all students, including those in private secondary schools.
1966	<u>Chapter 795, Textbook Aid Increase.</u> --Textbook aid was increased to \$15 per pupil in grades kindergarten through twelve.

1971 Chapter 822, Secular Educational Services for Nonpublic Schools.--This law requires nonpublic elementary and secondary schools to provide courses of study substantially equivalent in content to those offered to pupils in the public schools of the district in which the nonpublic school is located. In addition, \$33 million was appropriated to nonpublic schools to cover their costs for providing secular educational services (salaries of educational personnel, textbooks and other instructional materials, and actual time devoted to secular educational services). All nonpublic schools which met secular requirements established by their respective school districts were to receive State assistance for that service.

Unconstitutional: 1975 Meek v. Pittenger.--Although this decision was not based directly on this New York statute but on a similar Pennsylvania statute, Chapter 822 was likewise declared unconstitutional.

1971 Chapter 414, Tuition Reimbursement for Nonpublic School Parents.--This law established a tuition reimbursement program for parents of elementary and secondary nonpublic schools.

Unconstitutional: 1973 Committee for Public Education v. Nyquist.--The First Amendment does not allow income tax deductions for parents to cover private school tuition.

Unconstitutional: 1983 Mueller v. Allen.--Although the Supreme Court upheld a Minnesota statute that allows all parents to claim income tax deductions for the cost of tuition and other educational expenses, this case differed from the Committee for Public Education v. Nyquist because the New York statute limited deductions only to nonpublic school parents. This case, therefore, reaffirmed the 1973 decision.

1972 Chapter 996, Expenses of Nonpublic Schools for Required Examinations, Evaluation and Reporting Procedures.--All nonpublic schools can receive State assistance for reimbursement of expenses incurred in the administration of mandated pupil services.

Unconstitutional: 1973 Levitt v. Committee for Public Education.--The First Amendment does not allow for reimbursement to parochial schools for such costs as teacher-prepared tests.

1974 Chapters 507 and 508, Funding Nonpublic Schools Through Reimbursement.--These laws provide for the apportionment of State funds to qualified nonpublic schools for the reimbursement of the actual costs of services incurred in meeting mandates required by law in connection with testing, evaluating and reporting.

Constitutional: 1980 Committee for Public Education v. Regan.--This case upheld direct cash reimbursements to private schools for their administration of state-required and state-prepared testing.

1976 Chapter 503, Textbook Aid.--The Legislature allocated a minimum grant of \$5 per student for textbook aid to public and nonpublic school students from monies obtained through the State lottery, making the total minimum textbook aid \$15 per pupil.

1977      Chapter 786, BOCES Services.--This law authorizes the Commissioner of Education to allow nonpublic elementary and secondary schools to purchase instructional services from BOCES.

1978      Chapter 453, Transportation Services.--Transportation for nonpublic school students was authorized within the regular mileage limits allowed for public school pupils (2-15 miles).

1981      Chapter 960, Centralized Pickup.--School districts must provide transportation from centralized pickup points located at one or more public school sites for students attending nonpublic schools and residing 15 or more miles from the nonpublic school.

1983      Chapter 53, Textbook Aid Increase.--Textbook aid was increased from \$15 to \$20 per pupil for both public and nonpublic school students.

As this list of statutes demonstrates, the State has made its intentions known: it will provide public monies within constitutional limitations and funding availabilities to strengthen and/or maintain the wellbeing of nonpublic education in New York.

In addition to these precedent-setting statutes and U.S. Supreme Court decisions, many lower court decisions and Commissioner of Education interpretations have provided clarity where ambiguity existed. From the myriad of cases testing the State's relationship with its nonpublic elementary and secondary schools, the following have been chosen as examples of the types of issues resolved (21).

#### **Attendance**

Smith v. Donahue: 1922.--In all schools other than public schools where children of compulsory school age are attending, there must be attendance officers to ensure attendance.

#### **Registration of Private Schools**

Parker Collegiate Institute v. University of the State of New York: 1948.--Registration of private schools by the State can only be justified as an exercise of police power.

#### **Home Instruction**

People v. Turner: 1950.--Provided that the instruction given is adequate and the sole purpose of nonattendance at school is not to evade the law, instruction given to a child at home by a parent, who is competent to teach, satisfies requirements of the compulsory education law.

## **Separation of Church and State**

Zorach v. Clauson: 1952.--Separation of church and state and not individual preferences or prepossessions of the Justices of the United States Supreme Court, is the constitutional standard to be applied in deciding where secular ends and sectarian begins in education, and the problem, like many problems in constitutional law, is one of degree.

## **Nonpublic School Financial Aid**

Cook v. Griffin: 1975.--While parents clearly have a right to send their children to nonpublic schools, students in such schools have no corresponding right to equal aid, or even to any aid at all, in absence of specific legislative authorization.

## **Equivalency of Instruction**

Matter of Franz: 1976.--A minor receiving educational instruction in other than a public school must receive substantially equivalent instruction as given to other pupils attending a public school in the same school district.

Matter of Franz: 1977.--Compulsory features requiring that a minor attend public school or be provided with appropriate equivalent education are not unconstitutional as impinging upon the fundamental guarantee of privacy.

## **Instructional Time**

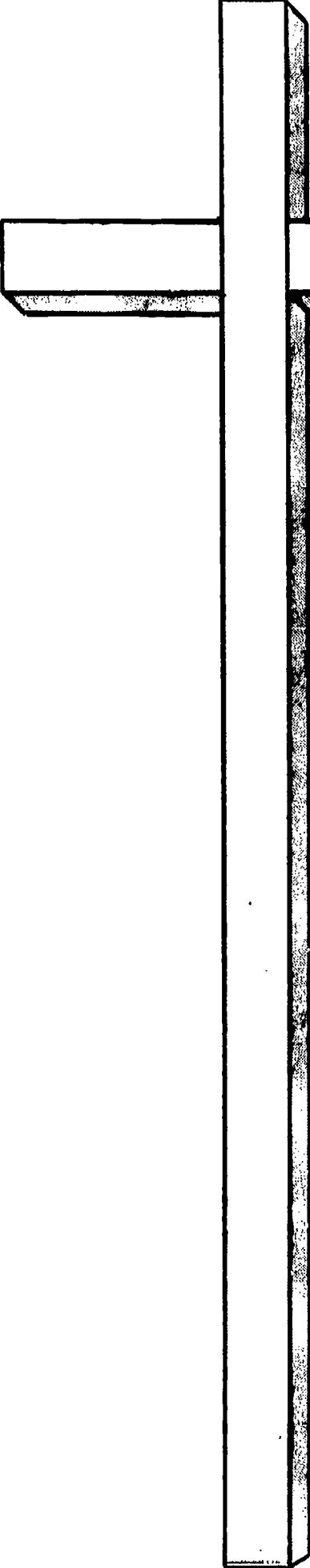
Matter of Franz: 1977.--Statutory requirement that a minor who attends upon instruction elsewhere than at a public school attend the same hours, five hours, does not impinge upon any constitutional right.

## **CONCLUSION**

The competition for students and available funds, upon which both sectors rely for their very existence, will be the major force in heightening controversies between these sectors in the near future. Public school educators must convince parents, local taxpayers and State legislators of the legitimacy of their needs and the "quality" of their programs. The nonpublic sector must convince the public that it can do a better job than the public school system. Many argue that they cannot do a "quality" job without assistance from the State,

especially as their enrollments increase. As the list of statutes and challenges attest, the Legislature, guided by the courts, has tried to find the means to satisfy both sides through constitutionally sound actions. The court can make determinations and judgments about controversial issues only when legislation exists. Pressures to expand public assistance to nonpublic schools on one side or to limit or decrease such assistance from the other side are creating difficult policy questions. Throughout the 1980's, many constituent groups, both educational and lay persons, will continue to influence how these questions are answered. They will be looking closely at funding levels and questioning how far, even within the existing statutory boundaries, the State can go in allocating monies to nonpublic schools.

The next chapter points out how the State financially assists nonpublic schools and outlines the current mandated rules and regulations that affect nonpublic schools in New York. The degree to which nonpublic schools, even those which receive State assistance, have "flexibility" in complying with these mandates is interesting. These three issue areas--State regulatory requirements for nonpublic schools, nonpublic school compliance, and state aid to nonpublic education--form the triad upon which rests the real gut issues surrounding the State's relationship with its nonpublic schools.



## **NONPUBLIC EDUCATION POLICIES: A BAROMETRIC READING OF HIGHS AND LOWS**

**WHAT IS THE RELATIONSHIP BETWEEN  
NEW YORK STATE AND ITS NONPUBLIC SCHOOLS?**

**WHAT IS THE RELATIONSHIP BETWEEN LOCAL  
SCHOOL DISTRICTS AND NONPUBLIC SCHOOLS?**

## WHAT IS THE RELATIONSHIP BETWEEN NEW YORK STATE AND ITS NONPUBLIC SCHOOLS?

A major problem for nonpublic schools, as well as for public schools in the State, is declining resources in the face of rising educational costs. Tuition serves as the primary source of funding for most nonpublic schools, although some parochial elementary schools do not charge tuition. In addition, New York State currently provides its public school sector with educational services, including transportation, textbook loans and health services. As more nonpublic schools emerge and a larger proportion of the State's school age population attends nonpublic schools, greater portions of the State's educational assistance "pie" may be served to nonpublic schools. The bottom line will almost certainly be heightened competition between the two sectors. Two fundamental questions underpin this State policy regarding nonpublic school assistance:

- Does the State have the constitutional right to provide public funds in support of its nonpublic school programs? Based upon the discussion in the preceding chapter, the answer to this question is yes, as long as the monies do not support sectarian purposes.
- To what extent can the State provide such funds without establishing regulatory controls over how the funds are spent? The answer to this question is unknown.

The next two chapters provide valuable information in response to these questions. The information contained in this chapter details the kinds of educational services and programs which the State has identified as areas of need in nonpublic schools. In addition, a brief review of State Education Department (SED) regulations and guidelines regarding nonpublic education illustrates how policies and programs can become confused and overly conflictive. The issue of "equivalency of instruction," a major focus of this report, is addressed by a review of SED's stated policies as outlined in its published guidelines. The final chapter in this section takes this issue one step further and examines equivalency questions at the local school district level. All of this information, combined with the judicial interpretations on this issue found in the

preceding chapter, presents the clearest description to date of the relationship between nonpublic education and New York State. The ensuing analysis should provide the kind of clues which, if uncovered and examined closely, will open the door for further clarification of clouded statewide policy directives and inconsistent program actions.

### TYPES OF NONPUBLIC SCHOOL AID

New York State has a long-held tradition of supporting a dual track or pluralistic system of education. Recall the historical evolution of the public and nonpublic school systems since their formation during the colonial period. New York has consistently practiced a "hands off" policy regarding State control of nonpublic schools while it has purposefully increased its fiscal responsibility.

The Blaine Amendment to New York's Constitution, Article XI, Section 3, (originally Section 4 of Article IX) is perhaps the most controversial restriction placed upon the powers of the Legislature. The amendment forbids the State from assisting religiously affiliated institutions of learning. Of all of New York's approximately 600,000 nonpublic students, only 10 percent attend non-religious institutions. The Blaine Amendment does, however, extend the State's responsibility to provide transportation services to all nonpublic schools regardless of their secular or sectarian purposes. Section 3, with the amended section underlined, now reads:

§3. Use of public property or money in aid of denominational schools prohibited; transportation of children authorized.

Neither the State nor any subdivision thereof shall use its property or credit or any public money, or authority or permit either to be used directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning.

Various types of aid are now provided by the State to nonpublic schools and to the children who attend them. Table 15 depicts the State's allocations to nonpublic schools in 1981-82. Each of these aid categories is described briefly with the accompanying expenditures for the 1981-82 year.

**TABLE 15**  
**State and Federal Payments on Behalf of Nonpublic  
School Students: 1981-82 (1)**

<u>State Revenues</u>	
Transportation	\$ 70,659,460 E
Health Services	9,800,000
Textbooks (K-12)	7,932,855 E*
School Lunch	1,000,000
Handicapped Students (4407)	11,872,781
Breakfast Program	1,000,000
Mandated Services	13,000,000
Excess Cost (Private)	<u>27,690,000</u>
<b>STATE TOTAL</b>	<b>\$ 142,955,096</b>
<u>Federal Revenues</u>	
School Lunch	\$ 15,000,000 E
School Milk	3,000,000 E
Breakfast Program	<u>5,800,000 E</u>
<b>FEDERAL TOTAL</b>	<b>\$ 23,000,000</b>
<b>GRAND TOTAL</b>	<b>\$ 165,955,096</b>

E = Estimated costs

E\* = Cost based on estimated New York City enrollment in nonpublic schools

### Transportation

Article XI, Section 3 of New York's Constitution, referred to previously, authorizes the Legislature to provide aid to partially cover the expense of transporting school age children to and from all schools, including nonpublic ones. In 1978, the New York State Legislature used this provision to set into motion a very important policy directive. Chapter 453 of the Laws of 1978 authorizes transportation assistance for nonpublic school students within the regular mileage limits allowed for public school pupils (2-15 miles). Additionally, Chapter 960 of the Laws of 1981 mandates that local school districts must provide transportation from centralized pickup points located at one or more public school sites for students attending nonpublic schools and residing 15 or more miles from such nonpublic schools.

The State reimburses the school district for 90 percent of the approved costs of transportation of those children who reside at least 1.5 miles from the schools they attend. The law also requires that a district must transport students who reside in the district within the following distances:

• Elementary	Grades K-8	2-10 miles
• Secondary	Grades 9-12	3-10 miles
• Handicapped	where needed	up to 20 miles

In 1981-82, nonpublic schools received an estimated \$70.7 million in State revenues for transportation services. As evidenced in Table 15, transportation costs represented half of all State revenues for nonpublic schools.

### **Health Services**

In 1976, New York's nonpublic schools were required to provide health services to their students comparable to those services provided to public school students. Chapter 794 of the Laws of 1974 instituted health cost assistance to nonpublic schools except those located in Rochester, Buffalo and New York City. All school districts are required to provide certain health services to both public and nonpublic schools. These services and equipment include:

- annual medical inspections;
- dental hygiene inspections and prophylaxes;
- school nursing services;
- examinations for employment certificates;
- examinations for athletics;
- notification procedures for parents;
- instruction in first aid;
- scales and first aid supplies;
- vision and hearing test devices; and
- health record forms.

For these services, reimbursable nonpublic school expenditures reached \$9.8 million in 1981-82.

## **Textbook Aid**

The origin of the State's effort to financially assist schools in the purchase of textbooks is found in Chapter 820 of the Laws of 1947. Three amendments to this law concerning textbook aid to nonpublic schools are Chapter 320 of the Laws of 1965, Chapter 795 of the Laws of 1966 and Chapter 53 of the Laws of 1983. Chapter 320 of the Laws of 1965 extended the power of local school district officers to purchase and to loan textbooks in either public or nonpublic schools in their respective districts. In addition, textbook aid to students in grades seven through twelve was set at \$10 per pupil. Chapter 795 of the Laws of 1966 clarified the term "textbook" by defining it as a book which a pupil is required to use as a text for a semester or more. Textbook aid was increased to \$15 per pupil. However, Chapter 503 of the Laws of 1976 appropriated \$5 per pupil from the New York State lottery toward the purchase of textbooks. The total minimum textbook aid, however, was kept at \$15 per pupil. Chapter 53 of the Laws of 1983 increased the minimum textbook aid to \$20 per pupil.

As seen in Table 15, textbook aid for 1981-82 totalled nearly \$8 million for K-12 students in the State's nonpublic schools. At the 1982 Board of Regents' legislative hearing, many speakers representing both parochial and nondenominational nonpublic schools recommended that textbook aid be increased to \$25 per student. If nonpublic school enrollments reach their projected 1985 level of 575,000 students, and textbook aid is increased to \$25 per student, this would mean a total State expenditure of \$14,375,000. The extra \$5 per student translates into an additional \$2.9 million.

## **Lunch and Breakfast Programs**

Nonpublic schools can participate in a subsidized school breakfast and/or school lunch program. These programs are subsidized by federal and State revenues. Children, enrolled in nonprofit private or parochial schools which are exempt from income tax under the Internal Revenue Code as amended, are eligible to participate (2). To be eligible, schools must:

- operate the school breakfast and lunch programs on a nonprofit basis for all children regardless of race, color or national origin;
- serve nutritious meals that meet established standards;
- provide lunches free or at a reduced price to children identified by local school authorities as unable to pay the final cost; and

- submit a policy statement to students concerning free and reduced price meals.

In 1982 New York received \$180 million in federal funds for this program. An estimated total of \$25 million, \$2 million of that in State subsidies, was paid to nonpublic schools for their participation in these nutrition programs. Table 15 on page 65 shows how these funds were broken down by program and funding source.

### **Handicapped Students**

Two state aid categories exist which assist nonpublic schools in educating handicapped students. Private Excess Cost Aid reimburses public school districts for most of their expenses incurred when pupils with handicapping conditions are placed, upon recommendation of school district committees on the handicapped, in approved nonpublic schools. The average district receives approximately 85 percent of its per pupil excess cost from state aid and contributes 15 percent from local funds. A simple way to explain the formula for generating Private Excess Cost Aid is:

#### Per Pupil

$$\begin{aligned}\text{Tuition Paid} - \text{Local Contribution} &= \text{Excess Cost} \\ \text{Excess Cost} \times \text{Excess Cost Aid Ratio} &= \text{Excess Cost Aid}\end{aligned}$$

#### Total Aid for District

$$\text{Excess Cost Aid Per Pupil} \times \text{Approved Pupils} = \text{Total Aid}$$

For severely handicapped students, the State may contract with a non-public educational facility for tuition costs of instruction. Section 4407 of the Education Law authorizes SED to approve such contractual arrangements when adequate public facilities are not available for the child. The payments are made directly to the nonpublic facility which the child attends. Local school districts must share the burden for costs incurred by such programs. The amount per child contributed by the district is the difference between the district's per pupil operating expenditures and the operating expense aid per pupil.

Table 15 on page 65 shows that \$11.9 million was provided by the State in 1981-82 to nonpublic schools for severely handicapped students. Excess Cost Aid amounted to \$27.7 million bringing the total to approximately \$39.6 million.

## **Other Mandated Services**

Chapter 507 of the Laws of 1974 provides for the apportionment of State funds to reimburse nonpublic schools in meeting mandates in connection with testing, evaluating and reporting (see Appendix B). The State clearly spells out its responsibility to guarantee educational opportunity to all residents. In order to meet this responsibility, "the State has the duty and authority to evaluate, through a system of uniform State testing and reporting procedures, the quality and effectiveness of instruction to assure that those who are attending, as required by law, are being adequately educated within their individual capabilities." (3)

The New York State Pupil Evaluation Program (PEP) is a statewide testing program for students in the third, fifth and sixth grades composed of standardized tests that provide an annual inventory of pupil achievement. All elementary schools are required by the New York State Commissioner of Education to participate (4). The purpose is to provide:

- teachers with immediate information for planning instruction;
- schools with summaries of all scores;
- school districts with district data for comparison purposes across the State; and
- SED with an extensive data bank for measuring pupil achievement statewide.

Regents Competency Tests, Regents examinations and the Scholastic Aptitude Tests (SATs) are three testing measures used by high schools to determine high school students' achievements. In order for any high school, including nonpublic schools, to issue a diploma, it must require that its students participate in one of these testing programs before graduation. The purpose of the examinations is to stimulate high academic achievement and quality teaching. However, no enforcement procedures are available to force nonpublic schools to participate in any of these "mandated" testing programs. The only sanction that SED has over nonparticipating schools is the threat of withholding registration and not allowing the schools to distribute diplomas.

Included in the category of mandated services are expenses absorbed by nonpublic schools in their participation in State programs for the reporting of basic educational data (BEDS). The degree of participation by nonpublic schools varies. Each individual school district is responsible for enforcing reporting practices by the nonpublic schools within its boundaries. When a nonpublic

school does not complete its BEDS forms, it is contacted by the Office for Nonpublic School Services in SED and asked to provide the information over the phone. However, the Office has no way of pressuring the school to give the information if it chooses not to do so (5).

A total of \$13 million was spent in 1981-82 by the State to reimburse nonpublic schools for their participation in mandated testing, evaluation and reporting activities.

## FUNDS AND ACCOUNTABILITY

Overall, \$166 million in State and federal funds was dispersed to nonpublic schools in New York State in 1981-82. Broken down on a per pupil basis, this means that each nonpublic school student received \$288 in public assistance. Of the \$143 million in State revenues alone, each nonpublic school student received \$248 in indirect subsidies. In a State which allocated \$4.2 billion in 1981-82 in state aid to all schools, this \$143 million seems to be minuscule. Compared to the \$3,394 per pupil average expenditure for public school students, nonpublic school students received only 8 percent of that given to public school students (6).

Other spending figures are also relevant in interpreting nonpublic school funding.

- In 1981-82, New York State appropriated \$4.2 billion for elementary and secondary schools. Of this, \$143 million went to nonpublic schools representing 3 percent of total expenditures in state educational aid.
- In 1981-82, New York State received \$615 million in federal assistance to schools. Of this, \$23 million went to nonpublic schools representing almost 4 percent of the total federal assistance package.
- In 1981-82, nonpublic school enrollment represented 17.5 percent of total school enrollment in the State. However, nonpublic schools did not come close to receiving this percentage of either State or federal assistance.

In 1982-83, nonpublic schools fared better than they had in the past with regard to federal monies. The Federal Education Consolidation and Improvement Act included a \$455 million program (Chapter Two), created by Congress at the request of the Reagan Administration, to replace 20 specific categorical aid programs. The guaranteed participation of students in nonpublic schools in these

programs meant that they received greater assistance than under the former categorical aid formulas. Not only did New York State receive less total funding--a one-year decline in allocations from \$48 million to \$31 million--but the distribution of those funds gave more money to nonpublic schools in the State. Based upon a formula representing actual school populations, nonpublic schools received approximately \$4.3 million, or 17 percent of the \$25 million available for distribution (after administrative costs).

Does the State provide public monies to nonpublic schools? Yes. Has the State mandated that nonpublic schools participate in testing and evaluation programs? Yes. Does the State equally share its resources with public and nonpublic students alike in assuring that they have adequate transportation to and from schools? Yes. Does the State attempt to ensure that all students are provided the best services and receive the best educational program? Yes. Then what are the loopholes, contradictions or inconsistencies which are creating confusion? Why should anyone--educator, legislator or citizen--object to this system of support for nonpublic schools? The following outlines two very distinct sets of arguments, both pro and con, in order to show why the current system of support is controversial.

#### **Proponents of Existing Funding System**

(1) In 1970, the Legislature clearly stated its obligation to support non-public education through Chapter 138 of the Laws of 1970 so that all children receive educational opportunity.

(2) All monies are directed at improving the academic outcome of nonpublic schools.

(3) Nonpublic schools are and have been quasi-autonomous institutions. Only in health and safety requirements has the State been consistent in applying administrative sanctions to nonpublic schools in noncompliance.

#### **Opponents of Existing Funding System**

(1) When the Legislature made this policy statement, school enrollment was on the increase. This statute was to take care of the overflow of students in public schools and ease the burden placed on public school programs. This is no longer the case with declining school enrollments.

(2) There is no distinction made between monies for secular or sectarian programs. Constitutionally, public funds cannot be spent for religiously based educational purposes. (This problem is discussed in detail later in this chapter.)

(3) Nonpublic schools do not have any accountability regarding the effectiveness of programs. Because they receive public assistance they should be accountable. This is an equivalency of instruction issue.

The last argument which is raised by opponents of the existing funding system charges nonpublic schools with avoiding comparable measurements of their student academic achievements and course content with those of the public school sector. The argument goes something like this: If nonpublic schools receive public assistance, then there should be some guarantees made by the recipients of those funds which assure the State that the funds are being used to provide programs of equal quality to those found in the public schools. The issue of equivalency of instruction is one which continuously challenges SED. Although the issue of equivalency is discussed in greater detail later in the chapter, a brief discussion here serves to exemplify the dissention over State control. Chapter 822 of the Laws of 1971 requires nonpublic elementary and secondary schools to provide courses of study substantially equivalent in content to those offered to pupils in the public schools. The equivalency of instruction provision has been loosely applied since its inception.

Evidence of this is found in a memo sent by the Deputy Commissioner for Elementary, Secondary and Continuing Education in April, 1980, to all school board presidents, district superintendents, superintendents of public and non-public schools and principals of nonpublic schools. The subject of the memo is "guidelines for determining equivalency of instruction." (7) Specifically, the memo states that the board of education of the public school district in which a child resides is responsible for determining whether the child is receiving instruction substantially equivalent to that provided by the public schools of that home district. The school board makes that determination through its superintendent of schools.

Local school officials are usually familiar with established nonpublic schools in their districts and therefore no formal visitation is necessary. However, for new schools, SED recommends that the public school superintendent visit the new school prior to its opening. In both cases, the public school superintendent should receive from the nonpublic school administrator the following items:

- a certificate of occupancy, health inspection report and fire safety report;
- a copy of the school calendar;
- a description of the grade levels and the enrollment;

- a list of names of students from the local public school district attending the nonpublic school;
- the names of standardized tests that will be administered by the school; and
- a list of the courses and subjects which will be taught.

There is no statewide enforcement policy to back up the preceding procedures. Therefore, it is left up to the discretion of the nonpublic school administrator to determine the degree of compliance with these procedures.

Suggested agency procedures developed in response to charges or assertions of inadequate equivalency programs in nonpublic schools are based upon "shoulds" not "musts." In other words, there is no real power or authority behind the guidelines establishing equivalency in programming. All actions are recommended ones, not enforceable regulatory ones. Therefore, the equivalency issue rests on a "good faith" policy between SED and each nonpublic school administration.

According to the Executive Director of the New York State Council of School Superintendents, many public school district administrators are not pleased with the impotency of this procedure (8). They are hesitant to interfere with nonpublic school business in their districts and feel that questions relating to equivalency of instruction should be addressed at the State level where the major portion of the public monies are provided to nonpublic schools. However, even among the school district administrators themselves, there is no universal agreement. This point is discussed in the following chapter. Until there can be some consensus generated by these administrators, it seems unlikely that "equivalency of instruction" procedures will be anything other than mere SED suggestions.

## COMPARISON TO OTHER STATES

Table 16 describes the ways in which each of the 50 states assists its nonpublic educational sector. According to the information found in this table, 20 of the states surveyed provide some type of state aid to nonpublic schools. As mentioned in the preceding chapter, Minnesota is particularly interesting. Since 1981, it has allowed parents of both public and nonpublic school students to deduct \$500 from their state income tax per elementary student and \$700 per secondary student. This aspect of subsidizing nonpublic education, called

**TABLE 16**  
**Aid Allocations to Nonpublic Schools in the States: 1981 (9)**

Alabama	Primarily used to support pupils in special education. Tuition and transportation costs up to the amount paid per public school child is provided.
Alaska	-----
Arizona	-----
Arkansas	-----
California	Entitled to use of textbooks and other instructional materials provided for Grades K through 8 by the State. Pupils are entitled to ride school buses over same route that public pupils ride.
Colorado	-----
Connecticut	Aid to nonprofit private schools and pupils attending nonpublic schools for special education, transportation and nutrition programs.
Delaware	Aid for transportation (average cost for public school students for prior year) and driver education.
Florida	-----
Georgia	State provides tuition support for multihandicapped students.
Hawaii	-----
Idaho	-----
Illinois	State reimbursement for the difference between the lesser of nonpublic facility tuition charge or \$4,500 and the district's tuition charge for regular pupils. Nonpublic school pupils are afforded transportation services on the same basis as public school pupils. Participation is authorized and funded for the state school lunch and breakfast programs.
Indiana	-----
Iowa	Transportation aid not to exceed district average transportation cost per pupil plus cost of equipment is provided. Funds for textbooks not to exceed comparable public school costs or \$7.50 per pupil, whichever is less.
Kansas	-----
Kentucky	-----
Louisiana	Funds provided for contract services for handicapped children when services cannot be provided by the local school system. Funds for textbooks and supplies are allocated; bus services provided.
Maine	State aid is provided for the transportation of private school children. Ninety percent of prior year's costs for the 1978-79; 50% of base year cost for 1979-80. Limited medical services and testing also provided.
Maryland	-----
Massachusetts	State provides aid for physical examinations, and expends money for special education services mandated by the federal government when private schools contract for these services through the public school system.
Michigan	-----
Minnesota	Income tax deduction of \$500 per elementary and \$700 per secondary student; \$16.73 per student for textbooks and tests in 1 private schools, \$47.14 for other materials in nonsectarian schools under 200 population (non pre-school); \$10.85 for health services.
Mississippi	Aid provided to distribute and freely loan books to nonpublic schools maintaining the same educational standards as public schools.
Missouri	-----
Montana	-----
Nebraska	-----
Nevada	-----
New Hampshire	Aid is provided for tuition of handicapped children attending nonpublic schools. The Child Benefit Services Program provides health, textbooks and hot lunch services to nonpublic school children.

**TABLE 16 (continued)**

New Jersey	Public school districts purchase and loan books to nonpublic school students residing in the public school district (not to exceed \$10 per nonpublic pupil).
New Mexico	-----
New York	Public school districts are reimbursed for costs of purchasing and loaning textbooks to nonpublic school children (up to \$15 per child). Transportation is provided.
North Carolina	-----
North Dakota	-----
Ohio	State provides textbooks, standardized testing, guidance and counseling services, and programs for the emotionally disturbed, crippled and physically handicapped. Health hearing and speech services are also provided.
Oklahoma	-----
Oregon	-----
Pennsylvania	The approved cost of providing transportation is reimbursed at 50%, or the district aid ratio, whichever is the greater. Health services rendered not to exceed \$4.70 per pupil in ADM; \$77 per pupil for auxiliary services (guidance, etc.) supplied nonpublic school pupils by public school personnel. A maximum of \$20 per pupil for textbooks and \$10 per pupil for instructional materials and equipment loaned.
Rhode Island	State includes costs of certain tuition, transportation and textbook expenditures in its equalization fund.
South Carolina	Tuition payments are made for handicapped pupils attending nonpublic schools when such attendance is a necessity.
Tennessee	-----
Texas	-----
Utah	-----
Vermont	-----
Virginia	-----
Washington	-----
West Virginia	-----
Wisconsin	State makes grants to nonpublic, nonprofit, nonsectarian agencies for services provided to low-achieving pupils. Public school districts are required to provide transportation for nonpublic pupils for which the state pays transportation aid at regular rates.
Wyoming	-----

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tuition tax credits, has stirred up highly charged debates in recent months. Now that the United States Supreme Court has ruled on the constitutionality of Minnesota's tuition tax credit program, the Mueller v. Allen decision undoubtedly will set a precedent for other states exploring tuition tax credit legislation at the state level. In addition, Mueller vs. Allen has set the stage for continued Congressional tuition tax credit action.

### THE EYE OF THE STORM: EQUIVALENCY OF INSTRUCTION

The relationship between New York State and nonpublic schools cannot be described as static; it is rather a changing, evolving, many-faceted process, influenced by the political climate, trends in educational philosophy, and particularly by the diversity among the schools themselves (10).

New York's State Education Department has had to tread very carefully in its exercise of authority over nonpublic schools. By establishing the Office for Nonpublic School Services in 1979, it appeared that SED embarked on a clear path for overseeing the administration of the laws, regulations and guidelines affecting nonpublic education. However, this interpretation may be inappropriate. Except for health and fire safety regulations, SED has been severely limited in enforcing State statutes, regulations and guidelines in the nonpublic sector. This is primarily due to the decentralized, local autonomy basis upon which compliance rests. Under the child benefit theory, State and local funds may be used by public school districts to provide specified services to all students, both public and nonpublic. Additionally, compliance with the compulsory attendance law must be enforced by local school district authorities. Therefore, the local school districts have the major responsibility for determining whether or not such standards as equivalency of instruction are met by all nonpublic schools in their districts. In the past, compliance for nonpublic schools has been associated with some form of reward, not punishment. All public and nonpublic high schools in New York that issue high school diplomas must be registered by the New York State Board of Regents. According to the definition found in the Official Compilation of Codes, Rules and Regulations of the State of New York, registered, when used with reference to a private secondary school, means "acceptance of the credentials of such school as equivalent to like credentials of public secondary schools." (11)

The intent behind the establishment of secondary school registration is to provide consistency of instruction with the standards set by the Board of Regents throughout the State's public school system. When applied to the non-public sector, registration allows for some degree of accountability of nonpublic school programs to assure that they achieve the same academic standards as their counterparts in the public school sector. Regarding equivalency of instruction questions, the registration process, as part of the requirements for granting diplomas, is the State's only means for regulating secular instruction in secondary schools.

Even after the Board of Regents stipulated in 1979 that only registered secondary schools could award Regent diplomas, many nonpublic schools continued to be nonregistered. These schools insist that their graduates do not need diplomas or else their graduates can later receive a State-approved diploma through a high school equivalency exam administered after high school graduation. These schools can issue certificates of graduation, not diplomas. Should the State be concerned about this subgroup of nonregistered schools? Does the State have the responsibility for requiring some measure of academic standards from these schools? These two immediate questions are being asked by many of the State's educators who must confront the issue of equivalency of instruction right in their own backyards.

However, the relationship between New York's nonpublic schools and the State is tenuous and changeable. The trend is also toward increased competition for students and funds between the two sectors. This could lead to further controversy among and between nonpublic schools, public schools, SED and the State Legislature. The balancing act requires a delicate handling of both sectors so as to maintain diversity of educational opportunities while keeping the highest possible standard of educational quality.

#### **State Regulation and Review**

It was not until 1979 that the Office for Nonpublic School Services was established within the larger Office for Elementary, Secondary and Continuing Education in SED. The stated purposes of this Office are:

- to oversee the administration of laws and regulations which affect nonpublic schools;
- to respond to the needs expressed by nonpublic schools; and

- to ensure that nonpublic school students receive equitable educational services to which they are entitled.

An Advisory Council on Nonpublic Schools was created concurrently and was made responsible for advising the Commissioner of Education on policies as they relate to nonpublic schools in the State.

In its four-year history, the Office has spent much of its time explaining to local public school personnel the laws, rules and regulations regarding nonpublic schools. It serves to interface between SED and local public schools regarding nonpublic school programs. In addition, it clearly indicates the recognition of need for such an interfacing unit--one which serves not only as an information clearinghouse or as the recognized interpreter of laws, rules and regulations, but also as the mediator of educational concerns between the public and nonpublic school sectors.

Article IV, Section 8 of the New York Constitution states the following:

No rule or regulation made by any state department, board, bureau, office, authority or commission, except such as relates to the organization or internal management of a state department, board, bureau, authority or commission, shall be effective until it is filed in the office of the department of state. The legislature shall provide for the speedy publication of such rules and regulations, by appropriate laws.

Under this authority, SED has established a series of regulations for nonpublic schools. According to the Official Compilation of Codes, Rules and Regulations of the State of New York, the following SED regulations address nonpublic school issues:

- Apportionment of Funds, Chapter 1, Section 3.36.--The Commissioner of Education, with the approval of the Regents, shall promulgate regulations relating to the apportionment of funds to nonpublic schools pursuant to the provisions of Chapter 507 of the Laws of 1974.
- Voluntary Registration of Nonpublic Nursery Schools and Kindergartens, Chapter II, Subchapter F, Section 125.--A school (nursery school or kindergarten) shall be registered by the department upon the submission of satisfactory evidence that it meets the standards set forth in this part and receives approval after on-site visitation. Registration shall be valid for a period of five years, subject to revocation for cause. Included in this Section are provisions for building and facility standards, fire and safety, educational equipment, health, staff requirements,

teacher/pupil ratio, educational programs, admissions, registration, and reporting procedures.

- Local Certificates, Chapter II, Section 103.5.--A school district or the principal of a nonpublic school may award a certificate to a pupil who is identified as meeting all the instructional criteria established for handicapped children. (Chapter II, Subchapter P, Section 200) and who completes an appropriate individualized education program. Each school district or principal of a nonpublic school shall report to the State Education Department within 15 days after the June graduation, the total number and the names of the pupils awarded certificates by each high school in that school year. No other certificates shall be awarded except for certificates recognizing achievement beyond the high school diploma.
- Licensed Private Schools, Registered Private Business Schools, Chapter II, Subchapter F, Section 126.--Fees or other charges for services or products produced in the course of instruction by students or instructors shall not be collected from the public unless the commissioner approves the collection of such fees or charges for the purpose of facilitating adequate practice in the curriculum or course. This section also details the responsibilities of school authorities in receiving SED approval for standards and methods of instruction, equipment and housing, qualification of teaching and management personnel, contract and tuition procedures, registration procedures and recordkeeping requirements. The last section, however, identifies the types of instruction exempted from licensure. Subdivision (b) reads:

Schools exempted pursuant to Section 5001 and 5002 of the Education Law and subdivision (a) of this section may waive such exemption and apply for a license or registration.

Pursuant to paragraph (b) of subdivision (2) of Section 5001 of the Education Law, the following types of nonpublic schools are exempted from licensure:

schools, other than correspondence schools, providing kindergarten, nursery, elementary or secondary education.

Underpinning what these regulations stipulate is the fact that non-public schools, other than elementary and secondary schools, must comply with stringent oversight procedures established by SED in order to assure consistency and quality in programming. In its response to formulating policies regarding elementary and secondary schools, SED has not established anything concrete. The issue has been circumvented by:

- constructing specific licensing procedures for nonpublic nursery schools and kindergartens on a voluntary basis only;

- requiring strict licensing procedures for nonpublic schools other than elementary and secondary schools; and
- publishing agency guidelines that local school districts may use in complying with State statutes requiring equivalency of instruction guarantees.

As indicated in the second chapter, there has been a steady growth in the number of new nonpublic schools opening across the State. Between March 1981 and September 1982, 109 requests for information about establishing a new school were filled by SED. Beyond this initial contact, however, there is presently no way for SED to monitor new school operations (12). This lack of oversight by SED is vexing. Regardless of the religious nature of the school, every child and parent in the State is statutorily assured that the health, fire and safety standards established by the Board of Regents are met. In other words, can the enforcement of these State regulations be left exclusively to the judgment of the local public school authorities?

#### **Administrative Sanctioning: Equivalency of Instruction Issue**

State law mandates the following requirements regarding nonpublic schools:

- every nonpublic school must submit a fire inspection report annually and conduct fire drills (Education Law, Section 807-2);
- attendance records must be kept (Education Law, Sections 3024, 3025, 3211);
- children enrolled in the school must comply with immunization records (Public Health Law, Section 2164);
- certain State mandated tests as determined by the Commissioner of Education must be administered if a school is to be registered by the Board of Regents (Education Law, Section 209); and
- "instruction given to a minor elsewhere than at a public school shall be at least substantially equivalent to the instruction given to minors of like age and attainment at the public schools of the city or district where the minor resides" (Education Law, Section 3204) (13).

This last "equivalency of instruction" standard has plagued the educational community since its inception. The problem is twofold: who decides upon an acceptable standard of "substantially equivalent instruction" and who enforces

the standard? Although these mandates are in effect for both public and nonpublic schools alike, enforcing mandates in the nonpublic sector can be difficult. The reason for enforcement limitations, as described previously, is that local school district authorities are given absolute responsibility for school compliance. However, the degree to which the school district should enforce these mandates is never specified. As a result, there is inconsistency in enforcement initiatives leading to inconsistencies by districts in data collection techniques, program accountability measures and local school authority involvement in equivalency of instruction questions.

According to the New York State Council of School Superintendents, local school district administrators are not anxious to become involved in nonpublic school program accountability questions. Too often, this involvement stirs up resentment and charges of excessive interference by the nonpublic school authorities (14). It is called a "political hot potato," and local school officials want nothing less than to become embroiled in a political skirmish in their district. However, legislative efforts to shift the burden of enforcement onto the shoulders of SED have been met with great resistance by SED itself, as well as the nonpublic school authorities. Conversely, local public school district authorities frequently are supportive of this shift so that they can be relieved of this very sensitive and potentially explosive regulatory function.

The State Education Department contends that the placement of this responsibility should remain at the local level. According to a memorandum dated April 2, 1982, SED argues that:

It would seem impossible to explain how for many decades the vast majority of more than two thousand nonpublic elementary and secondary schools in New York State have coexisted in harmony with the officers, trustees and personnel of the public school districts within which they are located. Without prejudice or rancor, public school officials, acting as local representatives of the public interest, have historically executed their responsibility to ensure equivalency of instruction for all children attending nonpublic schools. (15)

A related problem, and one which concerns a growing number of school district administrators, is the state of confusion regarding where final authority rests when a nonpublic school enrolls students from more than one school district. According to existing SED guidelines and State law, the school district in which the student resides is responsible for assuring that the student receives instruction equivalent to that found in the public schools in the dis-

trict. What if a situation arises whereby one school district feels that the nonpublic school is not providing equivalent instruction in accordance with its own academic standards while another school district is satisfied? The situation becomes even more complex when multiple school districts are involved in the controversy.

The New York State School Boards Association has advocated over the past several years that SED assume final responsibility for determining equivalency of instruction questions by directing the Commissioner of Education to determine whether instruction offered by each of the nonpublic elementary and secondary schools in New York meets local standards. New York's local school district authorities, the Association argues, should not become involved in matters pertaining to the enforcement of equivalency issues that the State has statutorily established its right to demand from its nonpublic schools.

#### **What are the Compliance Problems With Equivalency of Instruction?**

Pursuant to Section 3204 of the State's Education Law, the board of education of the public school district in which a child resides is responsible for determining whether the child is receiving instruction substantially equivalent to that provided in the public school of that home district. The board makes equivalency decisions based upon information provided by its superintendent of schools. The most recent SED guidelines, dated April, 1980, contain suggested procedures for handling questions that arise regarding equivalency issues (16). These are reproduced on the following two pages, with underscores added.

## GUIDELINES FOR DETERMINING EQUIVALENCY OF INSTRUCTION

Local school officials are usually familiar with established nonpublic schools in their districts; they are aware of the general character of the schools, their instructional programs, and the achievements of their pupils through test results. Such information should satisfy local school officials that these established schools offer equivalent programs of instruction and, therefore, it is not necessary for them to make formal visits to these nonpublic schools. However, if a question about such a school does arise, the following procedure should be followed:

1. The superintendent of schools of the district in which the school is located should inform the administrator of the nonpublic school that a question has been raised about equivalency of instruction in the school.
2. Before visiting a nonpublic school because a question has been raised about the equivalency of its instruction, the superintendent of schools, in conjunction with the district superintendent, where applicable, should contact the Office of the Assistant Commissioner of Nonpublic Schools in the State Education Department to inform that office of the question.
3. The superintendent of schools should request to visit the nonpublic school at a time that is mutually agreed upon by all parties involved.
4. At the time of the visit, the superintendent should check on the information which led to the assertion of the lack of equivalency. The superintendent may review the following:
  - a) Curriculum outlines
  - b) Textbooks
  - c) Test results
  - d) Attendance rosters
5. Before a school is determined not to be equivalent, the public school authorities may wish to review the process and results with the Assistant Commissioner for Nonpublic Schools, State Education Department, as a check on the thoroughness and fairness of the review. The superintendent should also inform the superintendents of schools in other districts where students at the nonpublic school in question reside that equivalency of instruction is being reviewed.
6. During the period of investigation about equivalency, services to the students attending the nonpublic school should be continued. Transportation, textbook services, and health services are to continue unless and until the board of education of the local public school district determines that the program is not equivalent.

7. Prior to a determination of nonequivalency, the board of education and the local superintendent of schools should meet with the officials of the nonpublic school to discuss the situation. If the problem can be remedied in a short period, the school should be required to make the appropriate changes and should be given time to do so prior to a determination of nonequivalency. If assistance is needed, the board is advised to contact the Assistant Commissioner for Nonpublic Schools, State Education Department.
8. Once a board of education approves a resolution at a public meeting that a nonpublic school is not equivalent, the parents of the students attending that school should be notified in writing that their children will be considered truant if they continue to attend that school. The parents should be given a reasonable time in which to transfer their children to either a public school or another nonpublic school. At the end of that time, all transportation, textbooks, and health services should be withdrawn. If parents continue to enroll their children in a nonpublic school whose program has been determined to be nonequivalent, they should then be notified that petitions will be filed in Family Court by the public school district authorities to the effect that their children are truant.

## **REGISTRATION AND EQUIVALENCY**

The State Education Department registers high schools. If a nonpublic high school is registered by the State, we recommend that the superintendent of schools and the board of education of the district need make no determination with respect to equivalency. A nonpublic high school may choose not to be registered even though its program of instruction is equivalent to that offered in the local public high school. The fact that a high school is not registered does not in itself mean that its program of instruction is not equivalent. However, should a nonpublic school offering high school-level study choose not to be registered, the local superintendent of schools will be advised of this by the State Education Department. The superintendent and the local district must determine equivalency of instruction through local review. This would also be the case should a nonpublic school apply for registration and not meet the requirements for registration. In any case, a school district should call the Assistant Commissioner for Nonpublic Schools in the State Education Department before contacting the nonpublic high school about determining equivalency.

Imbedded throughout these guidelines are a whole series of compliance weak spots which local school district administrators encounter when they attempt to interpret and implement these regulations.

- The entire procedure is filled with many loosely worded, nebulous stages , the interpretation of which is left up to individual administrators.
- The terms "should" and "may" do not carry with it any definitive meaning regarding force or support at the State level.
- Clear-cut meanings for "equivalency", although left up to the discretion of local school districts, can be in conflict with State-established definitions for minimum levels of instruction.
- The issue of religious-oriented instructional materials is not addressed.
- The entire process falls to the public school administrator upon whose shoulders the burden for implementing the procedure rests. Little or no attention is given to the roles and responsibilities of the nonpublic school administrators to take any initiative in complying with these regulations; and
- The present departmental equivalency of instruction guidelines using local school district personnel as enforcement authorities create over 700 different enforcement agents through the State.

In 1975, however, these guidelines were different. Note the official SED memorandum and the attached "Guidelines" from the Associate Commissioner for Instructional Services dated November, 1975, which are reproduced on the next two pages.

## STATE EDUCATION DEPARTMENT MEMORANDUM

To: City, Village and District Superintendents; District Principals;  
Diocesan Superintendents

Subject: Equivalency of Instruction

Date: November 1975

In recent weeks, we have been asked to provide local school administrators with information and advice regarding the "equivalency of instruction." The purpose of this field letter is to provide some overall comments and some guidelines to assist the chief school officer in carrying out legal responsibilities with respect to providing equivalency of instruction for all children.

Of primary importance is the fact that Education Law requires children between the age of six and sixteen to "attend upon full-time instruction." This requirement may be met by attendance at a public or a nonpublic school. In regard to instruction to be provided outside the public school, the Law requires the following:

1. Instruction may be provided only by a competent teacher.
2. Instruction shall be at least substantially equivalent to the instruction provided to a child of a similar age and attainments in the public schools of the city or district where the child resides.
3. It is expected that the child will attend for at least ~~as many~~ hours and within the general time periods as would be true "in the public school of the district where the child resides. This has been interpreted to mean the same general time periods rather than specific hours and days. A child may, however, be permitted to attend for a shorter school day or for a shorter school year or both provided in accordance with approval of the Commissioner of Education that the instruction the child receives has been approved by the local superintendent of schools as being substantially equivalent "in amount and quality" to that required in the public schools.

The superintendent of schools of the district in which the child resides is responsible for ascertaining whether the child is receiving instruction equivalent to that which is provided in the public school of the home district. This responsibility applies even if the child is receiving instruction in a nonpublic school outside the home district.

It should be noted that any nonpublic school applying for Regents charter or any nonpublic school offering instruction beyond grade eight must be evaluated through a staff visitation by the State Education Department.

In order to assist the superintendent in determining the equivalency of instruction, the Division of School Supervision has prepared the attached guidelines. If administrators have any questions or desire additional information, we ask that you write or call the Division of School Supervision, New York State Education Department, Albany, New York 12234 (telephone 518/474-3465).

## **GUIDELINES FOR EVALUATING A NONPUBLIC SCHOOL TO DETERMINE EQUIVALENCY OF INSTRUCTION**

### **Building and Facilities**

Certificate of safety and sanitation of building by responsible governmental agencies. Certificate of occupancy.

Adequacy of classrooms and equipment for number of pupils and for curriculum subject being studied (e.g. science, social studies).

Adequacy of physical education facility.

Adequacy of school library (number of volumes and appropriateness for pupils; periodicals).

Extent of non-print materials (audio visual aids).

### **Curriculum**

Adequacy in relation to State mandates.

Adequacy in relation to public school required offerings.

Adequacy of textbooks and other instructional materials.

Adequacy of course outlines.

### **Faculty**

Teachers should be qualified for their teaching assignment.

### **Administration**

Adequacy of tests and other instruments for evaluating instruction.

Adequacy of system of pupil accounting and of records of pupil progress.

In comparing the guidelines between 1975 and 1983, the following changes have been instituted by SED:

- teaching staff need not be deemed "competent" by the chief school officer of the district in which the school resides;
- any nonpublic school offering instruction beyond grade eight no longer is evaluated through a staff visitation by the State Education Department;
- physical education facilities are no longer evaluated;
- no mention of library materials are included in the new guidelines;
- no mention of nonprinted materials are included in the new guidelines; and
- SED's Office of the Assistant Commissioner of Nonpublic Schools, now intervening as the spokesperson for Nonpublic Schools, has replaced the Division of School Supervisor, former overseer for the public schools' application of equivalency of instruction assessment.

Questions regarding compliance with the equivalency of instruction component of the compulsory education law have been difficult for SED to answer for many years. Apparently, SED has wrestled with this problem, seeking to find the best possible "formula" or approach which satisfies both educational sectors. The pendulum now seems to have swung in favor of the nonpublic school sector. The public school officials have their hands "tied up" in loosely constructed statutes and loosely enforced mandates which appear to result in an accountability stalemate.

#### **How Do Other States Handle Enforcement?**

The equivalency of instruction issue is one of many problems inherent in New York's public/nonpublic school relationship. Like New York, other states are facing similar dilemmas. How do other states address the problem of regulation and governance? Table 17 provides the answer to this question by displaying a variety of information about governance relationships. It appears that New York State, like the other 49, does not place undo restrictions or tight controls over its nonpublic school system.

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TABLE 17

Regulation of Nonpublic Schools in the States: 1981 (17)

State	Governance			State Associations				Total Number of Private Schools	Total Private Enrollment
	State Accreditation	State Approval	State Licensure	State Teacher Certification	State Umbrella Association	State Advisory Group			
Alabama	Vol*	No	Vol (nonpri- vate)	Mand** (not enforced)	No	No		***	***
Alaska	No	Mand	No	Vol	No	No	58	3,212	
Arizona	Vol	Vol	Vol	Vol	Yes	No	510	59,313	
Arkansas	Vol	No	No	No	No	No	133	17,247	
California	No	No	No	Vol (Mand. Sp. Ed.)	Yes	No	3,163	434,150	
Colorado	Vol	No	No	Vol	No	No	260	40,000	
Connecticut	No	Vol	No	Vol	Yes (also ac- credited)	No	367	89,202	
Delaware	No	No	No	No	No	No	87	23,202	
Florida	No	No	No	Vol	Yes (also ac- credited)	Yes	1,203	207,511	
Georgia	Vol	No	No	No	Yes	No	366	80,686	
Hawaii	No	Mand	Mand	Mand	Yes	No	136	34,301	
Idaho	Vol	No	No	Mand (not enforced)	No	No	4 (accredited schools)	800 (accred- ited)	
Illinois	Vol (recog- nition)	No	No	Vol	Yes	Yes	1,475	353,152	
Indiana	Vol	Vol	Vol	Vol	Yes	No	296	80,055	
Iowa	No	Vol	No	Mand	Yes	Yes	231	54,192	
Kansas	Vol	No	No	Vol	No	No	167	28,330	
Kentucky	Vol	Vol	Mand	Vol	No	No	370	75,181	
Louisiana	No	Vol	No	Vol	Yes	No	403	143,121	
Maine	Vol	Mand	Mand	Mand	Yes	No	---	12,000	
Maryland	No	Mand (Vol for church school)	No	Vol	Yes	No	713	126,172	
Massachusetts	No	No	No	Vol	Yes	No	676	108,544	
Michigan	Vol	Mand	No	Mand	Yes	Yes	927	204,020	
Minnesota	No	No	No	No	No	No	505	90,919	
Mississippi	Vol	Vol	Vol	Vol	No	No	49 (Catholic School)	11,684	
Missouri	No	No	No	No	No	No	---	---	
Montana	Vol (high school only)	No	No	Vol	Yes	No	10 (accredited)	---	
Nebraska	Vol	Mand	Mand	Mand	Yes ("by-pass" federal funds)	No	220	37,522	
Nevada	No	Vol (church affiliated)	Vol (church affiliated)	Vol (church affiliated)	No	No	73	5,194	
New Hampshire	No	Mand	No	Vol	No	Yes	122	18,366	
New Jersey	No	Vol	No	No	Yes	No	1,050+	210,000+	
New Mexico	No	No	No	No	No	No	68	---	
New York	Mand	No	No	Vol	No	No	2,013	583,873	
North Carolina	Vol	No	No	Vol	Yes	No	326	56,823	
North Dakota	Vol	Mand	No	Mand	Yes (also ac- credited)	No	72	10,305	
Ohio	No	Mand	No	Mand	No	No	804	249,434	
Oklahoma	Vol	No	No	Vol	No	No	---	---	
Oregon	Vol	Vol	Vol	No	Yes	Yes	196	25,440	
Pennsylvania	No	No	Mand (for non-religious schools)	No	Yes (also ac- credited)	No	1,667	406,485	
Rhode Island	Vol	Mand	No	Vol	Yes	No	106	29,075	
South Carolina	No	No	No	Upon Request	Yes	No	429	54,047	
South Dakota	Vol (gr. 9- 12)	No	No	Vol (gr. 9- 12)	No	No	161	12,883	
Tennessee	No	Vol	No	No	No	No	441	---	
Texas	Vol	No	Vol	Vol	No	No	413	113,290	
Utah	Vol	Vol	Vol	Vol	No	No	---	---	
Vermont	No	Mand	No	No	Yes	No	60	9,253	
Virginia	Vol	No	No	Vol	Yes	No	419	63,983	
Washington	Vol	Mand	No	Mand (except for teaching of religion)	Yes (also ac- credited)	No	362	34,000	
West Virginia	Mand (class- ification)	Mand (Co. Board ap- proval)	No	Mand	No	No	22	4,930	
Wisconsin	No	Vol (equivalent)	No	Vol No	Yes No	No	938 40	163,251 4,000	

\*Voluntary  
\*\*Mandatory  
\*\*\*Data Received 2/26/81

## FUNDING VERSUS CONTROL: A PARADOXICAL ISSUE

Nonpublic schools are provided assistance by the State for mandated services and transportation. In return, nonpublic schools are required to provide assurances to the State that their students receive adequate instructional services comparable to those provided in the public sector. Nonpublic schools are diverse in their programs, student populations and philosophical foundations. As autonomous, tax exempt entities they are reliant upon public assistance, yet retain a high level of independence from State control. The point at which the nonpublic school sector can accept public assistance, yet retain its sense of independence, is a very elusive one. Even within the non-public school arena two camps exist: one for increasing the amount of State assistance, and one for adamantly opposing such increases if the result is increased State control over educational programs and services.

This chapter has pointed out that the nonpublic sector receives substantial amounts of money from the State. According to the growth patterns demonstrated in the second chapter, nonpublic schools should continue to increase their share of State assistance due to their increasingly larger share of total statewide student population. If this trend continues, what effects will be felt by local school districts across the State? More importantly, what effects are the existing conditions having at the local school district level? Having looked at the issue from an aggregate perspective, the most dramatic reflection of the problem may be found at the local school district level where the focus of regulatory control rests.

A cursory look at the controversy from the local school district level should enhance the degree of insight necessary for exposure of the sensitive nature of the problem. The next chapter illustrates how several school districts across the State are addressing public/nonpublic questions. It is interesting to note that the problem is perceived differently by those who are on the "firing line" when it comes time to apply laws, regulations and guidelines. A view from the local school district level is imperative in order to achieve the most comprehensive understanding of all facets of the problem.

## **WHAT IS THE RELATIONSHIP BETWEEN LOCAL SCHOOL DISTRICTS AND NONPUBLIC SCHOOLS?**

For New York's 700-plus local school districts the problems incumbent with effectively administering promulgated rules and regulations for nonpublic schools can be overwhelming. As was previously outlined, the responsibility for enforcing educational laws and regulations affecting nonpublic schools rests at the local school district level. Consequently, local school districts must independently wrestle with those nonpublic school policy inconsistencies encountered in complying with rules and regulations regarding nonpublic schools. As the competition for students and educational dollars stiffens, further strains may be placed on the relationship between the public school district administrator and the nonpublic schools under his/her purview. The local public school district administrator must be very sensitive to the myriad of legal and political issues underlying the public schools' relationship to nonpublic education. Conversely, the nonpublic school administrator must decide how to best coexist within the public school district in which he/she resides with the least amount of friction and interference from the district. From both sides, given the fact that each school sector has somewhat differing sets of responsibilities to the community and the State, the relationship takes on increased significance. Add to this the increased pressure for students and funds and the situation could potentially result in the deterioration of healthy relationships. Oftentimes, these relationships rely exclusively upon the individual personalities of the school administrators involved from both sectors. This human factor frequently is overlooked when assessing the existing problems.

According to Dr. Leslie F. Distin, BOCES District Superintendent of Schools for Broome, Delaware and Tioga Counties, the problem from his district's perspective is twofold. First, school administrators are confused as to what their responsibilities are regarding nonpublic schools. Second, they are cautious in their enforcement responsibilities because of potential political ramifications (1). Therefore, school superintendents, depending upon their particular school district circumstances, confront the public/nonpublic issue differently. Some perceive themselves as curriculum specialists and aggressively pursue the application of equivalency standards. Others, sensitive to the political climate of their districts, refrain from such interferences by ignoring equivalency standards.

## CASE STUDY APPROACH

In order to better understand the importance of the human factor in this controversy, several school districts across the State were selected for closer examination. The districts chosen represent four types of school districts based upon their geographical location and size. They include:

- the Syracuse City School District, one of the "big five" city school districts (New York City, Yonkers, Syracuse, Rochester and Buffalo) with a population base of over 125,000 (2);
- the Plattsburgh City School District, a small city school district in a city under 125,000 population;
- the Middle Country School District, a suburban school district on Long Island where the majority of the residents commute to their jobs; and
- the Schroon Lake, Hudson Falls and Granville School Districts, rural school districts located in areas designated as rural by the United States Bureau of the Census.

These school districts were contacted by the Task Force and asked if they would participate in the study. The first person to be contacted was the superintendent for each school district. The purpose of the study was explained to the superintendent, who then made arrangements for an on-site visitation. Each school district was visited and each school superintendent interviewed. Then, depending upon whom the superintendent had invited, meetings took place at which additional questions were asked. In every instance, participants cooperated fully and provided valuable information about their district's public/nonpublic school relationship.

For purposes of this study, a short description of each school district is first provided. Then, three questions are asked and answered according to each district's own experience. The three questions are:

- (1) Is your district experiencing any problems regarding the relationship between its public and nonpublic schools?
- (2) How does your district handle the issue of equivalency of instruction?
- (3) What suggestions could you make which would improve the situation either for your district or statewide?

Also included in this chapter is a section devoted to analyzing one selected Christian Fundamentalist school. The purpose is to give the reader a better understanding of how such a school functions, its instructional and curricular design, and its educational mission. Because many of these schools are stringently controlled by a centralized, Christian organization, their educational programs are consistent throughout the country. Little diversity exists among the schools. Therefore, examining one school is helpful in understanding how these schools differ from the traditional, "mainline" parochial, nonpublic schools.

The intent of this case study approach is to give the reader a provincial view of the problems as seen by educators in both educational sectors across the State. The following examples do not cover all of the problems or describe the wide range of difficulties created by these problems. The case studies, however, should demonstrate what people at the local school district are doing and thinking in response to the issue of State regulation over nonpublic schools.

## **SYRACUSE: A BIG FIVE CITY SCHOOL DISTRICT**

### **District Profile**

According to the Superintendent of Schools, Dr. Skip Meno, the City School District of the City of Syracuse has approximately 28,000 students (3). The school district is composed roughly of 80 percent public school and 20 percent nonpublic school students. Most of the nonpublic school enrollment, 6,200 students, attend parochial school. Historically, the parochial school system has played a very active role in the Syracuse educational program. Therefore, there is in place an overall attitude of cooperation between both sectors. This feeling of cooperation has been encouraged by previous efforts to assist in racial integration.

There are 15 Catholic schools in the city, each experiencing declining enrollments. Conversely, there are 13 Catholic schools outside the city in Onondaga County with increasing enrollments. There has been a high rate of outmigration from the city in both school sectors. This has created the economic problem of finding ways to sustain existing programs for fewer students, regardless of whether they are in public or nonpublic schools. This could mean that the City Diocese, long committed to providing educational opportunities to Syracuse children regardless of income, may have to increase the current \$350

tuition rate in order to compensate for the decline in total tuition income. One of the reasons for the cooperative attitude expressed by administrators is their desire to find ways to share resources. This mutual dependency reflects a positive educational philosophy directed to looking at what is best for the children in the community. "What we care about most is making sure the students get the best education possible," according to Superintendent Meno.

The district has one Christian Fundamentalist school, Sytacuse Pilgrim Academy, grades kindergarten through twelve. The school has been in existence for several years.

### Interview

Superintendent Meno invited the Superintendent for the Parochial School Diocese, Mark DeSanctis and the Director of Pupil Services for the City School District, Arnold Berger. When asked the three interview questions the following answers emerged.

Question: Is your district experiencing any problems regarding the relationship between its public and nonpublic schools?

Answer: Syracuse is lucky to have already in place a good working relationship between its parochial and public schools. The city's success is due to its team approach in which the parochial and public school officials meet regularly and discuss pending issues. The focus on the child philosophy espoused by the three administrators adds to the successful resolution of problems. Of particular concern to the Syracuse School District is the admission to public school of pupils who have attended nonpublic kindergarten. At issue is whether or not the public school must admit to the first grade a pupil who attended a nonregistered kindergarten. Problems arise because there is no minimum age for admission to an unregistered kindergarten and no authority for a school district to have an age requirement for admission to first grade. Therefore, parents have tried to enroll their children in these kindergartens before the child reached five years of age by December 1. Then, parents wanted to enroll the child in a public first grade class. The issue still has not been resolved as evidenced by the correspondence between the district and SED found in Appendix C.

Question: How does your district handle the issue of equivalency of instruction?

Answer: "I don't know what it means," responded Superintendent Meno. All administrators agreed that it was a very difficult issue, primarily between the public schools and the newer schools. Frequently, questions have arisen regarding the adequacy of curriculum, yet there is no standard criteria available to measure whether or not it meets minimum standards. Except for fire and safety regulations, it is difficult for the Superintendent to interfere in questions of equivalency. Also, as the regulations now stand, noncompliance means that the school district must refer the students of the school in question to Family Court in violation of the compulsory education law. According to the Superintendent that procedure is "political suicide."

Question: What suggestions could you make which would improve the situation either for your district or statewide?

Answer: The administrators had several suggestions, including:

- having SED develop a minimum standards checklist which local superintendents could use when examining a nonpublic school curriculum;
- requiring all children in the State to take standardized tests, including the minimum competency tests administered before high school graduation;
- establishing a local panel composed of public and nonpublic school parents to review equivalency cases, thus taking away political and local pressures; and
- bringing representatives from all educational sectors together once a year to discuss problems at the State level.

## PLATTSBURGH: A SMALL CITY SCHOOL DISTRICT

### District Profile

Plattsburgh's school enrollment rose in 1982 for the first time in 12 years (4). This was due primarily to the fact that the Plattsburgh City School District began offering full-day kindergarten. Table 18 shows this reversed enrollment trend between 1981 and 1982. With a total school population of

**TABLE 18**  
**Plattsburgh Public School Enrollment by Grade Level:**  
**1981 and 1982 (5)**

GRADE	Actual 1981	Projected 1982	Actual 1982
K	177	174	193
1	168	179	196
2	185	165	169
3	184	183	183
4	153	195	183
5	<u>209</u>	<u>149</u>	<u>158</u>
<b>SUBTOTAL</b>	<b>1,076</b>	<b>1,045</b>	<b>1,082</b>
6	181	206	206
7	171	185	190
8	169	172	174
Spec. Educ.	<u>6</u>	<u>7</u>	<u>3</u>
<b>SUBTOTAL</b>	<b>527</b>	<b>570</b>	<b>573</b>
9	183	163	194
10	219	177	174
11	191	207	211
12	184	186	183
Spec. Educ.	12	12	16
Veterans	<u>2</u>	<u>3</u>	<u>4</u>
<b>SUBTOTAL</b>	<b>791</b>	<b>748</b>	<b>782</b>
<b>TOTAL--All Public Schools</b>	<b>2,394</b>	<b>2,363</b>	<b>2,437</b>

approximately 3,700 students, the nonpublic school enrollment represents 34 percent of all students enrolled in schools. The average annual birth rate in the city during the past five years was 24.1 percent lower than the average birth rate from 1973-1978. Since 1980, the nonpublic schools in the city have experienced a 20 percent decrease in their enrollment. Table 19 depicts this trend. There is one public senior high school (782 students), one middle school (573 students) and four elementary schools (1,082 students). Two parochial high schools enroll over 550 students. One new nonpublic school (K-12), New Life Christian Academy, has 51 students. The City of Plattsburgh has a high proportion of Catholic residents representing 30 percent of the community. This strong parochial orientation has influenced the ability of the city's public and nonpublic schools to coexist harmoniously over the last several decades.

**TABLE 19**  
**Plattsburgh Nonpublic School Enrollments:**  
**1980-1982 (6)**

SCHOOL	GRADES	Total Enrollment			Resident Enrollment		
		1980	1981	1982	1980	1981	1982
St. Peter's	K-8	208	180	176	110	83	72
St. John's	K-8	313	328	295	176	166	137
Notre Dame	K-8	173	180	183	119	99	112
<b>SUBTOTAL</b>		<b>694</b>	<b>688</b>	<b>654</b>	<b>405</b>	<b>348</b>	<b>321</b>
M.A.I.	9-12	460	404	336	144	139	97
St. John's	9-12	230	221	220	88	78	85
<b>SUBTOTAL</b>		<b>690</b>	<b>625</b>	<b>556</b>	<b>232</b>	<b>217</b>	<b>182</b>
ERDC	K-8	186	131	-	78	51	-
New Life Christian Academy	K-12	-	49	51	-	5	13
<b>SUBTOTAL</b>		<b>186</b>	<b>180</b>	<b>51</b>	<b>78</b>	<b>56</b>	<b>13</b>
<b>TOTAL - All Private Schools</b>		<b>1,570</b>	<b>1,493</b>	<b>1,261</b>	<b>715</b>	<b>621</b>	<b>516</b>
<b>1980 - 1982</b>				<b>1980 - 1982</b>			
<b>-309 (-19.7%)</b>				<b>-199 (-17.9%)</b>			

#### Interview

Mr. Arthur Momot, Superintendent of Schools, provided an exhaustive amount of information describing his perspective on the past and present relationship between the public and nonpublic school sectors.

Question: Is your district experiencing any problems regarding the relationship between its public and nonpublic schools?

Answer: Unlike some other school districts with which Mr. Momot is familiar, the Plattsburgh City School District has a very good relationship with its nonpublic school sector. Some of the outlying districts are having transportation problems with their nonpublic schools. The nonpublics are informed by the Superintendent as to what financial assistance is available. The only problem which poses some concern is textbook aid.

There is no consistent procedure binding the nonpublics in submitting their requisitions for textbook loans. It is often difficult to limit or control the amount of textbook aid given to the nonpublics because of such inconsistencies.

Question: How does your district handle the issue of equivalency of instruction?

Answer: Because the district only has one small Christian Academy, the equivalency issue is not big. The parochial schools have never been a problem because they are registered. However, they do not go through any type of reregistration process on a regular basis like the public school system. The public schools do not interfere in the parochial schools' educational programs. The new Christian school has students from several school districts. It has four instructional personnel. Although he has not visited the school, Mr. Momot is satisfied with its program. The reason is that no one wants to become involved because it can stir up controversy.

Question: What suggestions could you make which would improve the situation either for your district or statewide?

Answer: Look at the entire State regarding the effectiveness of the nonpublic schools. SED should initiate some statewide measures to assure minimum standards. It should not be left up to the individual school districts. These measures include the following.

- New schools should submit to the local school district their level of expectations for students enrolled in their program.
- All students should be administered competency exams.
- Buildings must be certified safe and "educationally" sound.
- Questions about personnel in new schools need to be addressed and answered by SED.
- Finally, the State should establish an arbitration board to present an objective picture before a case reaches Family Court.

## MIDDLE COUNTRY: A SUBURBAN/COMMUTER SCHOOL DISTRICT

### District Profile

Dr. George Jeffers, Superintendent of Middle Country Central School District, Suffolk County, Long Island, considers his district to be one of the finest in the State (7). The reason is a combination of circumstances, one of which is the interest displayed by the community in its educational system. Although the district, like so many other districts in the State, suffers from declining enrollments, Middle Country is trying to find innovative ways to adapt to the decline. The district will, based upon the results of an important school bond referendum, begin to make adjustments in its programs to reflect this retrenchment of enrollment. Interestingly, two neighboring school districts are facing enrollment increases at unprecedented rates. Due to the rapid development of middle income housing, the school age population around Middle Country is growing too fast to be adequately accommodated within existing facilities. The current school enrollment in Middle Country is 13,000, down 18 percent since 1975. With this type of situation confronting the school administration, it is no wonder that they are very carefully scrutinizing all of their educational expenditures. The 1982-83 school year was the first time the district had to rely on a "safe harmless" aid formula to protect it against a reduction in state aid due to declining enrollments. Middle Country has 877 students enrolled in nonpublic schools representing 7 percent of the total school population. The proportion of students attending nonpublic schools has increased by 163 percent since 1975. There is no indication that this growth trend has peaked. This school district will be making some tough decisions regarding its educational offerings over the next few years.

### Interview

There are two distinct nonpublic school issues which Middle Country Superintendent Jeffers confronts. The first is the growing number of problems involving equivalency of instruction questions with the newer, Christian Fundamentalist academies. The second is the emerging issue regarding textbook loans to nonpublic schools. Each of these will be discussed separately, yet it should be remembered that these two nonpublic school issues are interrelated. Each places the ultimate authority for carrying out State mandated services to non-public schools with the local public school authorities, yet, little definitive enforcement powers are provided to assure that compliance occurs.

Question: Is your district experiencing any problems regarding the relationship between its public and nonpublic schools?

Answer: Yes. The most pressing issue at this time centers on textbook aid to nonpublic schools. Surrounding districts spend varying amounts on textbook aid to their nonpublic schools, from \$58 per student in Patchogue to \$44 per student in Middle Country. Nonpublic textbook aid in both instances is double that spent on public school textbook aid. The problem, obviously, is not an isolated one, indigenous only to Middle Country. Several school districts in the surrounding area are facing similar problems. The problems, as stated by the public school district administrators in the area, include:

- the lack of some standard measure to determine whether or not expensive curricular materials requested by nonpublic schools should be accepted for textbook aid;
- the lack of any evaluation standard to measure whether or not textbooks requested by nonpublic schools are classified as sectarian or nonsectarian; and
- the costs to the public schools regarding the management of the textbook loan program to nonpublic schools, including but not limited to, present procedures, problems of inventoring and storage, purchase of expensive materials, and nonsectarian textbook selection.

In response to this problem, eight area school administrators began meeting in the Fall of 1982 to examine ways in which the textbook program could be improved. Their objective was to study the feasibility of establishing a computerized nonpublic school textbook loan problem for the BOCES Suffolk Region 2 District. In addition, the committee proposed to develop better guidelines regarding the approval of sectarian/nonsectarian textbooks and guidelines on equivalency assessment of instruction of handicapped students in the home. Chaired by Dr. Jeffers, the committee, officially known as the Nonpublic School Student Textbook Loan Study Committee, has developed a cooperative method to deal with the problem. A computer-based pilot program, initially involving one parochial school in one district, appears to be spearheading the list of the most feasible approaches. The pilot program would consist of the development of a computerized central

clearinghouse listing all textbooks in the district (both public and nonpublic), cross-referenced, and dated according to each specific edition by the publishing company. After a short period of time, other school districts would be encouraged to incorporate their textbook lists until the textbook data base included all school districts in the BOCES Suffolk 2 District. Ultimate expansion would include the Suffolk County region. Although a monumental task, the committee members adamantly feel that it is worth the effort if it would save the districts the headaches and expenses involved in textbook loans to non-public schools.

Question: How does your district handle the issue of equivalency of instruction?

Answer: There is a new spectrum of schools increasing in numbers throughout the area. These are Christian Fundamentalist schools. They are generally small in size yet many in number. The task of contacting these schools in Middle Country, especially the newer ones, is left up to the Assistant Superintendent of Schools, Dr. Gerald Foley. Dr. Foley finds that many problems crop up when he tries to determine if one of these schools is meeting equivalency standards. First, there is no universal "equivalency" measure available for comparison. Second, the newer Christian Fundamentalist schools may not accept any form of state aid and therefore they feel they should have no oversight from the State. Finally, it is often difficult to translate and convert the Christian Fundamentalist curriculum (national programs called Accelerated Christian Education) into local curricular standards. The State Education Department provides little or no assistance. The BOCES Suffolk 2 District Superintendent, Dr. James Hines, provided a form which can be used by local district authorities to facilitate nonpublic school educational program review. The Nonpublic School Equivalency School Visitation Discussion Guide (see Appendix D) is very comprehensive in its review procedures. However, at this time, few if any school superintendents are using this form.

Question: What suggestions could you make which would improve the situation either for your district or statewide?

Answer: The administrators suggested the following:

- The State Education Department needs to give greater support to the superintendents who must make curricular judgments. Too many times they have failed to provide that support and until they do, the equivalency issue will remain "heated."
- Other policy questions must also be answered, such as whether or not all students in the State, regardless of where they attend school, should be required to take standardized tests measuring minimum competencies.

## SCHROON LAKE CENTRAL SCHOOL DISTRICT

### District Profile

Schroon Lake Central School is located just off the Northway (Rt. I-87) in the eastern section of the Adirondack Park, midway between Glens Falls and Plattsburgh (8). Housed in one building, the school has approximately 300 students in grades kindergarten through twelve. This 1935 building features 23 classrooms, including an industrial arts room, a typing room, an art room, an orchestra room, a vocal music room, a home economics room, a library and a combination auditorium-gymnasium. The grounds include 28 acres with several new sports fields under development and a nature trail.

The curriculum is considered "traditional" for this small school district. At the high school, electives are offered in traditional subjects plus History of the Adirondacks, Term Paper Writing and Photography.

The population of this district averages about 2,000 people in the wintertime. Students come from outlying areas in South Schroon, North Hudson, Blue Ridge and Paradox Lake. According to the Superintendent, these students can be best described as average to above average. Many could be termed "culturally deprived." Approximately 40 percent of each graduating class goes on to some form of higher education with many attending community colleges in New York State.

Characterized as rural but wealthy, the school district has a high tax base. However, the year-round residents could be termed average to lower income. The district, although small in number of pupils and large in the size of the area from which it draws, can be called a peaceful place to raise a family surrounded by nature and an active school system which tries to create a most effective climate for learning.

## **Interview**

Mr. Dan MacGregor, Superintendent of Schools, also acts as building principal. In a meeting with Mr. Joe Ambersini, guidance counselor, and Mr. Bill Bowman, headmaster of the district's only nonpublic school, Mountainside Christian Academy (K-12), the following information was revealed.

**Question:** Is your district experiencing any problems regarding the relationship between its public and nonpublic schools?

**Answer:** Schroon Lake is different. The Word of Life, a large Christian Fundamentalist sect, composes a significant segment of the community, geographically and demographically. The relationship between the public school system and the Christian Fundamentalist school, Mountainside Christian Academy, is tenuous at times. One issue, recently resolved by the courts, questioned whether or not the land owned by the Word of Life community should be taxed for purposes of school aid. The court held that the taxation requirements were constitutional. Other issues, such as the transferability of students between the public school system and Mountainside Academy, where many Word of Life residents send their children, plague the district. Often, these controversies have erupted into highly charged political skirmishes spreading beyond the immediate Schroon Lake community. However, Mr. Bowman insists that the situation is palatable as long as the district and State leave Mountainside Academy alone. Mr. Bowman affirmed that his school has a wonderful relationship with Schroon Lake Central.

**Question:** How does your district handle the issue of equivalency of instruction?

**Answer:** Mr. MacGregor feels that many questions need to be resolved before an improved cooperative relationship can exist between the public and nonpublic schools in Schroon Lake. Right now the equivalency issue is avoided. The Board of Education, two members of which send their children to Mountainside, wants a good relationship to exist. When equivalency problems arise, they are confronted quietly or else set aside for future deliberations. The curriculum used in Mountainside for grades K-6 is ABEKA, developed by the Pensacola Christian College

in Pensacola, Florida. All subjects are taught from the Biblical standpoint. The secondary grades (7-12) use the Accelerated Christian Education (ACE) curriculum. This is an individualized instruction approach to subject matter. Examples of this program are located in Appendix E. The program is broken down into paces, or booklets. There are 12 paces in each equivalent Carnegie unit (State standard for credits necessary for high school graduation). Students take self-tests which are graded by adult monitors. Advancement requires an 80 percent correct grade. A student who fails to pass must take the entire pace over again. Students progress at their own rates. Both of these nationally distributed Christian education programs must be purchased by the schools wishing to use the materials. An initial fee is required, the cost dependent upon the size of the school program involved. A school averaging 50 students would pay approximately \$4,000 in initiation fees. School personnel are trained by the publishing company. No formal educational or pedagogical training is required of those school personnel who coordinate curriculum and instruction in the school. Mr. Bowman stated firmly that any form of State control over his school was unconstitutional. This included any regulation requiring the Mountainside Academy to submit forms, student information or curricular information to the public school district. The Mountainside Academy accepts no aid from the State or federal government. Transportation assistance was not defined as state aid.

Question: What suggestions could you make which would improve the situation either for your district or statewide?

Answer: Mr. Bowman would like to see the situation remain unchanged. Mr. MacGregor suggests that, if the State continues to insist that equivalency of instruction measures occur, all students in the State should participate in minimum competency testing. Also, SED should clarify what it determines as minimum curriculum standards. It is a tough and highly volatile issue in the Schroon Lake Central School District. No one likes the tension, yet no one seems to have concrete answers for reducing the tension. For Schroon Lake, the problem will not disappear in the near future.

## HUDSON FALLS CENTRAL SCHOOL DISTRICT

### District Profile

The Hudson Falls school budget has been rejected by the community on several occasions (9). Recently, the district experienced the meaning of being on an austerity budget due to voter rejection of the budget. As school enrollments have declined and expenditures have increased, the school district has tried to convince the community of the legitimacy of its educational needs. Dr. Jack Zeis, Superintendent of Hudson Falls Central School District, stresses the fact that declining school enrollments and the low tax rate experienced by the district makes the job of financially managing the district more difficult. However, he feels that the district's enrollment may be "bottoming out" and this could stabilize its fiscal situation. Hudson Falls has two nonpublic schools, the Greater Glens Falls Christian Academy (Baptist) and the Kingsbury Academy (Seventh Day Adventist). The only parochial school available is St. Mary's in Glens Falls. According to Dr. Zeis, the district does not interfere with either of these two schools except when disagreements occur, particularly when students transfer from the nonpublic schools into the public schools.

### Interview

Question: Is your district experiencing any problems regarding the relationship between its public and nonpublic schools?

Answer: The major problem is that the district administration has difficulty locating students. When attendance information about nonpublic school students is requested, it is frequently not provided. Because the two nonpublic schools do not participate in any standardized testing program, the district has no record of how well the schools are teaching minimum competencies. Home study is a problem too. The district has no solid guidelines to use in determining equivalent instruction at home.

Question: How does your district handle the issue of equivalency of instruction?

Answer: Before Dr. Zeis came to the district in 1978, the former superintendent "cleared" the two schools regarding the equivalency question. Since

then the superintendent has made one attempt to look at the nonpublic schools but met with some resistance on their part. "It is not an easy thing to do, especially in this community. It could get all messy and I don't think the community wants that." Dr. Zeis suggested that it may be easier if BOCES superintendents were responsible for determining equivalency as they did in the past.

Question: What suggestions could you make which would improve the situation either for your district or statewide?

Answer: According to Dr. Zeis, the following recommendations would be helpful:

- Get the responsibility away from the local school superintendents and give it to SED.
- More support should come from SED.
- The Office for Nonpublic School Services does not assist the public school sector in resolving this issue but seems to "protect" nonpublic schools. There seems to be a double standard which must be corrected if the relationship between public and nonpublic schools is to be improved.

#### GRANVILLE CENTRAL SCHOOL DISTRICT: A SYNOPSIS

The Granville Central School District is similar in size to the Hudson Falls Central School District. It is unique in that it accepts students on a tuition basis from Vermont. It has one Junior/Senior high school, two elementary schools and one nonpublic school. Like Hudson Falls, Granville Central School District Superintendent, Dr. Bob Meldrum, feels that the relationship between the public and nonpublic schools is one of noninterference (10). Little effort is made by district officials to "quality check" the program at its only nonpublic school due to difficulties which might arise from such interference. Dr. Meldrum reiterated Dr. Zeis' feelings about the problem and its effects on his school district. In addition, Dr. Meldrum suggested that the State either eliminate equivalency mandates or else strengthen its role in the enforcement process.

## WHAT IS A CHRISTIAN FUNDAMENTALIST SCHOOL?

### General Description

Time after time throughout all school visitations, the equivalency of instruction problem was mentioned when referring to a district's involvement with its Christian Fundamentalist schools. The description of the school in this section gives a clearer picture of what Christian Fundamentalist education is: its educational philosophy, objectives, curriculum, instructional techniques and discipline practices. The school patterns its program along strictly dictated guidelines prepared at the national center of the Accelerated Christian Education Organization.

The pastor of the church and school described here provided an indepth description of the school from its purposes through its methods for rewarding and disciplining its students. Much of the information is taken directly from the student handbook (11).

The school began in the early 1970's as part of the mission of the Baptist Church. It has approximately 50 students, prekindergarten through twelfth grade. The objective of the academy is to train young people to apply the Bible in their lives. The students wear uniforms and follow a rigid code of no smoking, drinking, gambling, dancing, use of drugs, abusive language or critical attitudes. A student may be dismissed from school at any time he is found out of harmony with the rules and policies of the school. Patriotism and religion are integrated throughout the entire educational program. The colors red, white and blue are used for all purposes, in decor, dress, etc. Students use flags to signal the need for help from monitors--an American flag for non-academic reasons (restroom privileges) and a Christian flag for academic assistance. There are three pledges said by all students daily before instruction: Pledge of Allegiance to the American Flag, Pledge of Allegiance to the Christian Flag, and Pledge of Allegiance to the Bible. Students receive a 20 minute sermon each morning.

### Accreditation

The school is not accredited by New York State. However, the school chooses to be accredited by Jesus Christ and not by the State. "To accept the creed of the religion of Humanism, the official religion of the State of New York, would be idolatry. Such a blasphemous act would demand the use of state textbooks, state curriculum, state standards, state manuals, and state-certified

teachers. The religion of the state produces lying, cheating, adultery, robbery, assault, drug abuse (including alcoholism), and many sexual crimes. In addition, it produces poor academics."(12) The school recommends that graduates do not attend State-operated schools of higher education.

### Academic Program

The school offers three diplomas: college, career and vocational. Academic honors are stressed and include:

- an average of at least 91 percent on pace work;
- completion of three paces, or units of study, per subject per quarter;
- completion of monthly Scripture memorization; and
- completion of all prescribed enrichment programs.

Christian leadership training includes 20 minutes in devotional groups daily, weekly chapel sessions and special evangelical meetings held from time to time.

Tuition fees are charged according to the number of children in the family who attend the school. Each year new students pay \$30 registration fees and returning students pay \$10. Tuition payments are:

	Nonmember	Member
First child	\$650	\$500
Second child	300	180
Each additional child	180	free

### Discipline

Discipline is a very important part of the educational program. Students are reminded "that the Lord Jesus Christ expects us to be disciplined in all of life."(13) The paramount rule is "do not disturb." Demerits are given for disturbances or broken rules. Five demerits on any day means a conference with the pastor. Spankings are administered for moral violations (lying) at the discretion of the administration and after consultation with the parent(s). According to the pastor, the ACE organization has an approved method for such spankings. First, the student is brought to the pastor's office and they read scriptures together. They discuss the wrongdoing and the student is asked if he is sorry. They pray together. Then, in front of one adult witness, the student leans with his hands against a desk (to prevent movement and body injury) and

receives three hits on the buttocks. Each hit is progressively stronger. After each hit, the pastor comforts the student and reads more scriptures. Finally, after the third hit the student and pastor embrace and the student is consoled. "It is taught that through pain we understand love."(14) Any problem with this practice is referred to the attorneys representing ACE. The ACE organization provides legal counsel to all its member schools.

Finally, the pastor adamantly stressed the difference between his school and the public school. The school handbook also spelled out these differences and explained why the program was successful (15).

**Progressive:** The newest relevant proven methods are utilized and being further developed.

**Utilitarian:** Each student is endowed with individual gifts from God and is trained as an individual.

**Practical:** The teacher's task is to assist the student in discovering his talent, guide him in the development of it, and motivate him in the fullest use of it.

**Functional:** The classroom procedure trains the student to be creative, relevant and thorough.

**Sensible:** The school gives the student a plan for direction, things to see, hear and do, and assists him in his quest for learning.

**Fundamental:** God's Word is the measure of every standard, each experience, and the ultimate results.

The school incorporates the activities of the church with those of the school. It is often difficult to distinguish where church activities begin and school activities end.

#### **WHAT THE CASE STUDIES TELL US**

The controversy surrounding the relationship between public and non-public education appears to have touched many school districts across the State regardless of size or location. What this means is that no district is immune from the controversy and therefore no one escapes from the political waves churned up by the storm.

The case studies also illustrate several relevant points in understanding the controversies. First, the particular composition of the community

in which the school district is located seems to be an important factor when assessing the degree to which the regulatory problem exists. For communities which have sizable or growing numbers of nonpublic sectarian students, the controversy heightens in intensity.

Second, the competition between the public and nonpublic educational sectors for students and funds can cause problems at the local school district level. When students begin to transfer in either direction between educational sectors, neither sector wants to take up the fiscal slack which results when enrollments in their schools decline. Each sector relies on students for its financial support. As evidenced in Syracuse, when students leave the parochial schools it means that increased monies are needed in order to supplement the drain in tuition dollars. This can be accomplished by raising tuition fees; yet, doing this may jeopardize student enrollments. For many urban parochial schools in particular, it is necessary to keep tuition fees low in order to guarantee continued student enrollments.

Third, the personalities of the school administrators are a key element in determining whether or not successful resolutions to many public/nonpublic problems occur. Where a spirit of cooperation exists not only in theory but in practice, the district fares better in resolving conflicts between educational sectors. When an underlying atmosphere of mistrust or fear pervades, the problems seem more unresolvable and immovable. A "we versus they" attitude signaled that a more serious schism existed between the public and nonpublic administrators.

Fourth, districts handle the problem of equivalency of instruction differently. In the cases studied, there was no consistency in management style by those responsible for complying with SED regulations and guidelines. However, in every instance, complaints were made by public school administrators regarding compliance procedures. Most often these complaints centered on two specific points:

- the lack of clarity in the regulations and guidelines; and
- the lack of support from SED in compliance efforts.

Finally, in every instance school administrators interviewed from both sectors were eager to suggest ways in which the current confusion could be remedied. The suggestions heard most often included:

- the need for greater specificity in SED regulations and guidelines, primarily in the area of criteria for minimum standards in measuring educational equivalency;
- the promulgation of rules backed up by SED regarding the procedures for establishing new schools and determining equivalency of instruction;
- the need for increased communication between SED and local school district authorities as well as between public and nonpublic school administrators focusing on all issues pertaining to equivalency of instruction; and
- the creation of an arbitration board or panel, composed of members from each sector of the school community, to hear cases involving equivalency questions prior to the case reaching Family Court.

The overall message conveyed by all of these school districts comes across loud and clear: the confused policy situation as it now stands can be educationally and politically hazardous to the health of the entire local school district population. Undoubtedly, these problems will not subside for New York State school districts in the near future regardless of how "sunny" a picture is portrayed. The problems run deep, and understandably, not too quietly. Perhaps resolutions for many of these controversies will be left up to judicial interpretation. This method of resolution, however, has only succeeded in establishing policy parameters, not policy specifics. Local school districts want specifics and are tired of trying to figure out what the "parameters" mean for their districts.

The final task left now is to review and analyze the information about New York's nonpublic schools contained in this report. The following chapter addresses the three questions set forth in the introduction, thereby pulling together a series of possible policy options available for consideration.



## **WHAT ARE THE IMPLICATIONS FOR NEW YORK?**

## **WHAT ARE THE IMPLICATIONS FOR NEW YORK?**

Can New York State afford to disregard or inadvertently neglect its nonpublic school sector in its efforts to improve the quality of the entire school system in the State? Can the nearly 600,000 nonpublic school students be ignored when it comes time to assess the educational achievement of students in New York? Under the unfurled banner of "Educational Excellence in the 1980's," is there any reason why both the public and nonpublic sectors cannot work together toward achieving such an admirable goal? If New York is to continue to offer a diverse and quality education to ALL its students, the answer to each of these questions must be NO.

Based upon the information compiled in this report, nonpublic schools are a vitally important component of the State's educational system. Due to the recent burgeoning attention given to educational quality in the State, as exemplified by the New York Regents' "Action Plan to Improve Elementary and Secondary Education Results," nonpublic schools cannot be ignored. This plan, awaiting approval in 1984, contains sweeping recommendations for change, including more rigorous academic requirements for high school students and extended standardized testing programs. How will nonpublic schools fit into this new plan? Will this plan only increase tension between sectors? According to SED releases thus far, nonpublic schools are receiving very little, if any, attention.

### **COURSES OF ACTION**

The State has three possible courses of action it can take in response to the nonpublic school issues raised in this report. First, it can choose to do nothing and remain aloof to the existing policy conflicts. This approach assumes that the problem either is not worthy of attention or will disappear in time.

Second, it can clarify and strengthen the existing policies and put into effect a means of improved enforcement of those policies. This assumes that the State is on the right course, but merely needs "stronger winds" to keep up the momentum.

Finally, it can choose to remove those statutes, regulations and agency guidelines which permit the State to become involved in nonpublic education. For example, it can amend or remove its compulsory attendance laws as well as its equivalency of instruction mandate. This would assume that the State no longer sees itself responsible for the education of all New York students. The State would then declare itself out of the nonpublic education picture, giving non-public schools complete autonomy regardless of their status in accepting indirect public assistance.

If the middle course, the only really viable one, is chosen, New York State will be put to the test in its ability to continue to finance two separate educational sectors while ensuring that, through regulation, the highest quality in education is available to all its children. The spiraling level of competition for funds and students could make this test a tough one. Choosing the middle road means that the State would have to respond financially by:

- increasing its spending in support of nonpublic schools by increasing general fund expenditures for all educational purposes;
- increasing its spending in support of nonpublic schools without increasing general fund expenditures, thereby taking away funds usually set aside for public school aid; or
- decreasing or maintaining its spending levels even if such actions jeopardize the stabilization or growth of nonpublic education.

In addition, choosing the middle road means responding to the regulation issue by:

- requiring that nonpublic schools, regardless of the level of aid received, be regulated more closely to assure that equivalency of instruction occurs;
- maintaining a "laissez faire" attitude toward regulatory questions regarding equivalency of instruction, regardless of the State's position on spending, thereby generating judicial questions of separation of church and state; or
- examining the current regulatory process, and, without making substantial changes in the degree of regulation, strengthen the State's enforcement procedures on existing controls, especially regarding equivalency of instruction issues.

## QUALITY ASSURANCE

With quality as its watchword, the State is entering into a period where academic quality assurances will underpin efforts to reform education. Quality assurance includes two forms of measurements:

- comparability or equivalency of school curricula; and
- statewide standardized testing of the performance of all students.

The difference between these two approaches is that the first assumes that certain curricula are necessary for educational excellence. The second assumes that, regardless of the curricular experience of the student, the most important measure is whether or not the student has achieved or mastered specified skills and knowledge.

Concern for educational quality is experiencing an explosive rebirth of interest in both the public and nonpublic sectors. The impetus for reform stems from a series of reports criticizing the current state of educational excellence. The National Commission on Excellence in Education, appointed by President Reagan to study the quality of the nation's elementary and secondary educational programs, has asserted that "a rising tide of mediocrity" is imperiling America's schools (2). The Commission's report, in combination with a flood of other such charges made against the quality of the nation's educational system, is forcing New York to carefully assess the effectiveness of the State's public and non-public schools. This assessment will force legislators, educators, the business community, local community leaders and parents to confront some serious issues regarding the relationship between the State and its nonpublic school sector. Three of these important issues have been addressed in this report.

- To what degree does New York State fiscally support nonpublic education?
- What quality assurances can the State expect from the nonpublic sector?
- What can be done to improve quality assurance in nonpublic education?

As John Naisbitt points out in his highly acclaimed book, Megatrends, short term remedies to difficult problems have not proven effective in the past. What

Americans now must learn is to deal with the questions, such as these, that require long term thinking. For education, this means addressing the question of relationships: the relationship between the State and its public school system; the relationship between the State and its nonpublic school system; and the relationship between the public and nonpublic school systems.

## **TO WHAT DEGREE DOES NEW YORK STATE FISCALLY SUPPORT NONPUBLIC EDUCATION?**

New York State spent approximately \$143 million on its nonpublic school students (K-12) during the 1981-82 school year. Though 17.5 percent of the State's total elementary and secondary school students attended nonpublic schools, the \$143 million in State aid amounted to only 3.3 percent of the \$4.3 billion spent by the State in elementary and secondary schools for 1981-82. The \$143 million in State funding for nonpublic education may seem like too much to some and too little to others. The following arguments describe the pros and cons of State assistance to nonpublic schools.

### **Arguments for State Assistance to Nonpublic Schools**

Nonpublic elementary and secondary schools serve a purpose to the State. Because of the State's compulsory education laws, nonpublic schools assist the State in educating children. For 1982-83 that meant 600,000 students.

Nonpublic schools provide assurances to the State that alternative forms of education, or choices, are available to its citizens.

The courts have provided the State with the necessary "means test" to guarantee that no public monies are used for sectarian purposes in nonpublic schools.

### **Arguments Against State Assistance to Nonpublic Schools**

Nonpublic means just that--separate from public support. Nonpublic schools charge tuition and do not need State assistance.

Nonpublic schools are not required to provide the State with information necessary to measure their effectiveness. Therefore, the State should not provide monies without such quality assurances.

Over 80 percent of the students in nonpublic schools attend sectarian schools. Although the courts have established a "means test," it is so loose that there is very little control over expenditures "overlapping" into religious training.

Regardless of which side of the argument the reader chooses, the realities are that the State does appropriate monies for nonpublic elementary and secondary school programs. To date, the kind of assistance that nonpublic schools can receive has been determined by a series of State and federal court cases in response to State legislative action. The amount of assistance is set by the State Legislature. One example, as mentioned in the fourth chapter, is textbook aid, which was increased during the 1983 Legislative Session from \$15 to \$20 per pupil. This applies to both public and nonpublic school assistance.

Reviewing what the State and federal governments spent on New York's nonpublic schools in 1981-82, the following expenditures appear:

#### **STATE AND FEDERAL ASSISTANCE FOR NONPUBLIC EDUCATION**

Type of Assistance	\$ million
Transportation	70.7
Health Services	9.8
Textbook Aid	7.9
School Lunch Program	1.0
Handicapped Student Aid	11.9
Breakfast Program	1.0
Testing Services	13.0
Excess Cost Reimbursement for Handicapped Students	27.7
<b>TOTAL STATE ASSISTANCE</b>	<b>143.0</b>
<b>TOTAL FEDERAL ASSISTANCE</b>	<b>23.0</b>
<b>TOTAL ASSISTANCE</b>	<b>166.0</b>

This is a sizable sum and forecasts predict that this will continue to increase throughout the 1980's.

As these funding figures demonstrate, the nonpublic sector receives substantial amounts of money from the State and federal governments. What is missing is a further breakdown of how these funds are distributed. That is:

- How are these funds distributed to the various categorical school types?
- How are these monies distributed in terms of local or regional distinctions?

- Are there schools which receive no funding even though they may be eligible, and if so, why do they refuse to accept assistance?
- Are schools which receive no State assistance immune from all regulation by the State?

To ensure that the substantial appropriations to nonpublic schools are effectively used, these types of questions must be answered.

### Tuition Tax Credits and Deductions

The controversial tuition tax credit concept for nonpublic schools has cropped up again on legislative agendas during 1983. As education gains prominence as a highly volatile, politically pertinent issue in the 1980's, the nonpublic school controversy will intensify. Especially crucial now are the reactions of the various states to the U.S. Supreme Court's recent decision upholding Minnesota's tuition tax deduction plan. The decision in Mueller v. Allen may set off a flurry of activity in New York to revamp the State's tuition tax credit statute that was struck down in 1973. The 1973 U.S. Supreme Court decision in Committee for Public Education v. Nyquist was made on the grounds that the law promoted religious training, therefore infringing upon the separation of church and state guaranteed in the U.S. Constitution.

The Minnesota law, however, differs from New York's former tuition tax exemption program by permitting all parents--whether their children attend public or nonpublic schools--to deduct their childrens' educational expenses. This type of program, the Court argued, provides state assistance to a broad spectrum of citizens and is not readily subject to challenge under the Establishment Clause. In light of the Supreme Court's ruling, the status of the Reagan Administration's plan to permit tuition tax credits from federal taxes remains ambiguous.

If the Reagan Administration is successful in passing federal legislation creating a national tuition tax credit program for nonpublic school parents, a wide range of questions will flood the offices of New York State policymakers.

- Can New York State establish a tuition tax credit program exclusively for nonpublic school parents in the State?
- Should the State differentiate between public and nonpublic school parents in providing tuition tax credits, or should all parents of school age children receive such credits?
- What fiscal impact would such a tax credit program have on New York State's current general expenditures on education?

- If a tuition tax credit program for nonpublic schools is feasible, what effects would such a program have on the State's public school system, especially in terms of student enrollments?
- Can the State afford to create a tuition tax credit program without reliable data available in which to determine the extent to which such a program would impact on the State, as a whole, as well as certain portions of the State?

### The Paradox of Funding

The bottom line with respect to this question of fiscal support rests on two funding factors: extent and level. The State has the authority to extend assistance to nonpublic schools within the funding boundaries established by the courts. Additionally, the State can adjust the level of funding according to what it perceives as necessary. However, every time the State attempts to extend or adjust the level of funding, it knows it trespasses into a mine field of controversy and confusion. In other words, a paradox exists which makes the State liable for criticism regardless of whether it provides assistance or not. At the same time, the State must now face the fact that the educational scene is changing and as the press to improve the quality of the State's educational system increases, it must be willing to make the difficult decisions while keeping the best interest of the State's children in mind.

### WHAT QUALITY ASSURANCES CAN THE STATE EXPECT FROM THE NONPUBLIC SECTOR

No mechanism currently exists whereby the State can measure the quality of the nonpublic elementary and secondary school programs. Several reasons explain this shortcoming:

- the haphazard and unreliable method used by SED to collect and analyze nonpublic school data;
- due to the diverse nature of nonpublic education, which includes both sectarian and secular schools, inconsistencies exist in the degree to which the State enforces mandatory statewide elementary and secondary testing programs;
- except for fire and safety regulations, the State appears impotent in its ability to establish and enforce nonpublic school reporting and curricular standards;

- although New York State law requires that equivalency of instruction be assured to nonpublic school students, enforcement and/or measurement is left exclusively to the local school districts with little assistance or guidance by SED; and
- the recent increase in the number of Christian Fundamentalist schools across the State has compounded the quality assurance problem due to their refusal to provide access to any information about their students.

Throughout its history, New York has shown a high regard for its nonpublic school sector. The State has allowed it to function with a minimal level of State interference. However, as public pressure intensifies for the State to upgrade the quality of its total educational system, this laissez faire approach may be disrupted. One important aspect endemic to the process of measurement and evaluation in educational programming is the need for accurate and reliable data. Until the data is collected and analyzed, only subjective judgments about the effectiveness of programs can be made. Information and assessment about its schools are the keystones to any efforts by the State to reform its educational system so that it meets the needs of its citizens.

#### **WHAT CAN BE DONE TO IMPROVE QUALITY ASSURANCE IN NONPUBLIC EDUCATION?**

There is a growing sense of urgency expressed by New York's educational, business and governmental communities to better understand the dynamics affecting elementary and secondary education today. Instrumental to this understanding is the need for comprehensive, accurate data describing three important components of education:

- classification and demographic characteristics of the schools;
- equivalency of academic programs and student services; and
- measurement and assessment of pupil achievement.

New York State has taken steps to legislate that such important information be collected by its public schools and annually reported to SED. However, nonpublic schools, mainly nontraditional, religiously-affiliated schools, have not fully responded to the State's need for data, thereby creating a "cloudy" picture of who and what comprise New York's nonpublic schools. Most importantly, what is missing is the crucial piece of information which tells how well the nonpublic

sector secularly educates its students. State-level policymakers need to be aware of the fiscal impact of nonpublic school growth where it occurs in the State. In an era of receding student populations and increasing competition for these students, it is important to monitor where unusual growth and/or decline occur, both at the local school district level as well as at the State level. Therefore, the availability of accurate, descriptive data is imperative. As evidenced throughout the second chapter, this data is fragmented, imprecise and unreliable for nonpublic schools.

### **Classification and Demographic Characteristics of Nonpublic Schools**

The nonpublic school sector is very diverse. Organizational and programmatic differences among the various types of schools, both sectarian and secular, create a range of nonpublic school models, making it difficult to establish clear-cut classification schemes. The diversity in programming is hailed as one of the major strengths of nonpublic education by its proponents. This diversity, unfortunately, creates problems in determining intersector program consistency and equivalency. Interspersed throughout all sectarian programs is the premise that religious instruction is fundamental to education. A recent increase in the number of Christian Fundamentalist schools is in response to what some perceive as rampant moral decline and growth of "secular humanism" in public schools. Therefore, under the label "nonpublic" are a multiplicity of schools whose educational aims and objectives are as varied as their locations. Attempting to separate and categorize schools according to the present set of criteria used by SED does not work. What is needed is a revamping of those criteria upon which schools are classified. In addition, it should be the responsibility of SED, not the school itself, to determine the classification and type of the school.

A second data problem focuses on the difficult task of analyzing the growth patterns and shifting enrollment trends in nonpublic education in the State. This is a result of two major deficiencies in SED's data base which were discussed in the second chapter.

- Nonpublic schools are not forced to file information about their populations with any State agency or central clearinghouse. Therefore, what information SED does gather from the individual schools cannot always be easily aggregated due to the lack of a standard reporting format. The aggregate numbers are also incomplete because of nonreporting schools.

- The classification of a nonpublic school's level (elementary vs. middle), affiliation (Roman Catholic vs. Episcopal) and instructional staff (teacher vs. other professional position) is also left up to the individual school to report. This leads to further confusion and inconsistency in reporting data based on the existing classification schemes.

Surveying the data that has been collected indicates that classification schemes frequently change from year to year. This makes it very difficult or impossible to analyze trends in the data. Also, many nonpublic schools refuse to provide sufficient descriptive data of any kind to either the designated authority in the State (SED) or to the local school districts. Too often, little is known about the numbers of children in the schools, much less the quality of their educational programs.

Remember that it is a small portion of nonpublic schools which blatantly refuse to cooperate in providing information about their students. However, in a State as large as New York, even such a small number adds up to many children. Additionally, the lack of a comprehensive data base on nonpublic schools has an impact on the ability of the State to accurately assess its educational performance. The preceding chapter describes one public school superintendent's frustration at not knowing where students from that district were attending school. The superintendent is entrusted with that responsibility under the compulsory education law, yet the refusal of a nonpublic school in his district to submit student information or transfer records resulted in many headaches.

New York State risks being caught off-guard. As more pressure is exerted at the federal, State and local levels to "do something about quality education," it risks:

- becoming immobilized due to imprecise and unreliable data about its nonpublic school students; or
- attempting to respond without the information necessary to reach reliable decisions.

The risks are too great with so much at stake.

### **Equivalency of Academic Programs and Student Services**

The second component necessary for improving the effectiveness of New York's schools is a means to determine the equivalency of programs offered in nonpublic schools. Supposedly, the State's equivalency of instruction provision in Section 3204 of the Education Law ensures that curricular programs in non-

public elementary and secondary schools are equivalent to those found in the public school sector. However, the institution and enforcement of compliance procedures for evaluating equivalency have been left up to local school districts. As mentioned earlier in the report, this enforcement can become political dynamite, making it difficult to actively pursue quality assurances. More importantly, administrators of many of the newer, Christian Fundamentalist schools disregard the local public school authorities' efforts to collect information about students. Many of these administrators argue that any intrusion is an infringement of their rights to offer their students an education "according to God's will." Although these schools represent the fringe of the nonpublic school sector, they are very determined to remain entirely apart from the public school system in which they reside. The resulting mix of Christian Fundamentalist education with traditional sectarian, parochial and nonsectarian schools produces a confusing policy dilemma regarding academic standards and equivalency of instruction.

The people who confront this dilemma firsthand ought to be the ones with a more complete list of practical ideas and suggestions for remedies. As the interviews of the local school officials in the preceding chapter pointed out, the following suggestions could be the keys to improved public/nonpublic school relationships:

- the need for SED's regulations to be more specific, primarily in the area of criteria for minimum standards in measuring educational equivalency;
- the promulgation of rules backed up by SED regarding the procedures for establishing new schools and determining equivalency of instruction;
- the need to transfer responsibility for determining equivalency of instruction from the local school districts to SED or, at least, to have SED give the local school districts more support in terms of comprehensive, standard guidelines for determining equivalency;
- the need for increased communication between SED and local school district authorities, as well as between public and nonpublic school administrators, focusing on all issues pertaining to equivalency of instruction; and
- the creation of an arbitration board or panel, composed of members from each sector of the school community, to hear cases involving equivalency questions prior to the case reaching Family Court.

It seems that the State's statutory provision calling for equivalency of instruction is not the issue being challenged. The problem is the measurement of these quality assurances--how to determine whether or not nonpublic schools are providing equivalent academic programs. As stated in the beginning of this chapter, the issue rests on two measurement choices:

- equivalency of instruction criteria determined by comparing the academic offerings between the public and nonpublic schools in each school district; or
- equivalency of instruction outcomes as determined by the academic achievements of the students throughout their schooling, as measured by statewide standardized testing programs.

### **Measurement and Assessment of Pupil Achievement**

Perhaps the most controversial component of the equivalency of instruction issue is student academic performance. The State has ostensibly mandated that all students participate in a series of State-approved standardized testing programs. The State's Pupil Evaluation Program (PEP) tests are required for all third, fifth and sixth graders. In order for high schools to issue diplomas they must demonstrate that their students have achieved competency by administering one of three tests: Regents' Competency Tests; Regents' exams; or the Scholastic Aptitude Tests (SAT's). The State has even provided reimbursement funds for nonpublic school participation. However, no effective enforcement mechanism exists to ensure that testing mandates are implemented by nonpublic schools. As a result, participation by nonpublic schools is sporadic.

The importance of measuring equivalent instructional outcomes becomes more pressing in light of the glaring gaps in the present equivalency of instruction process. These gaps include:

- the structuring of guidelines by SED using weak phraseology and criteria;
- the present SED equivalency of instruction guidelines using local school district personnel as enforcement authorities, creating over 700 different enforcement agents throughout the State; and
- equivalency of instruction outcomes, as measured by standardized tests, with no integration into the present equivalency of instruction process. Consequently, no measure of student academic performance exists which holds nonpublic schools accountable for individual student performance.

The present equivalency of instruction process utilized by SED emphasizes the criteria used at the local school district level in determining equivalent educational programs rather than student performance outcomes. This emphasis could be misdirected. SED must recognize that three options are available regarding the equivalency of instruction process:

- continue yet strengthen the current method of quality measurement by focusing exclusively on local school district enforcement of equivalency of instruction as it applies to comparability of curriculum;
- discontinue the current method of quality measurement and focus on student performance outcomes reflected through a statewide program of standardized testing inclusive of nonpublic schools; or
- develop a two-prong measurement approach focusing on the comparability of curriculum at the local school district level as well as student performance at the State level.

Although the first option means a continuation of existing problems, it still guarantees to local school districts that equivalency of instruction reflects, programmatically, what is important in that district.

The second option, statewide testing, relieves SED and local school administrators from intruding into the affairs of nonpublic schools. If the nonpublic schools achieve satisfactory standardized testing results then how they were achieved is unimportant.

The third option, eliminating the "either-or" choices, assumes that both kinds of measurements are important in educational programming. The State, through a combination of statewide testing and local school district measurements, would have two distinctly separate means for determining equivalency of instruction in nonpublic schools.

## CONCLUSION

Equivalency of instruction is central to the theme of educational quality and excellence. How can the State realistically move in the direction of educational improvement for all of its students if it fails to include one of the competitors for these students, the nonpublic sector, in its efforts? Do the State's nearly 600,000 nonpublic school students count when it comes to quality assurances? There must be some consideration given to these students and the

effectiveness of their academic programs. It may not be quick and easy, but the State could devise a testing program which would incorporate both public and non-public schools. Overriding all the differences between these sectors is the fact that the State has asserted its right to expect minimum consistency and uniformity in academic performance regardless of where a student attends school. One method the State has chosen to monitor academic quality is its' standardized testing programs, supposedly administered to all elementary and secondary school students. After all, if nonpublic schools are complying with State-approved curricula, is there any reason why they should not want to participate in these testing programs? Doesn't educational quality and excellence in the public sector mean the same as educational quality and excellence in the nonpublic sector? Aren't there certain basic skills, as measured by standardized tests, which nonpublic schools ought to be responsible for teaching their students? Does a statewide testing program truly infringe upon the rights of the nonpublic schools to teach how they want to teach? Or does it threaten to expose where weaknesses exist?

A reasonable response to this emerging problem with nonpublic education requires flexibility: flexibility, that is, as long as it goes hand in hand with consistent educational goals and objectives applicable to both public and non-public schools. The first step then, would be the implementation of a data collection process with strong SED enforcement procedures behind it. The goal here is to make sure the State knows where its students are, who they are and whether or not they transfer between the public and nonpublic schools in their districts.

The second step evolves as the State moves to close the gaps evident in its present methods for determining equivalency of instruction. This step involves the elimination of weaknesses evident in SED's present process for determining equivalency of instruction. To close the gaps SED must choose one of the three previously mentioned options.

By taking these two steps, the State will have a greater assurance of attaining educational excellence in the 1980's. Including the nonpublic sector as an integral part of the entire educational system presents some challenging questions.

- If the State attempts to reform and upgrade the quality of its public educational system, why should the nonpublic schools be exempt from such efforts?

- Should enforcement of equivalency of instruction remain a local school district responsibility?
- Should those schools which refuse to accept any form of State assistance comply with equivalency standards?
- Would not a statewide testing program, inclusive of all non-public schools, serve the purpose of ensuring that educational standards are being met? Would such a system be a reasonable substitute for nonpublics who reject the idea of local equivalency efforts?
- Would testing nonpublic students using the same testing standards applied to public school students be the most feasible method for resolving the equivalency conflict?
- Will the State, in its efforts to improve the quality of its schools, develop a comprehensive, Regent-approved K-12 curriculum applicable to all students in the State?
- Would a tuition tax credit or deduction program for nonpublic school parents provide the necessary balance for the State to insist upon stricter enforcement of equivalency standards?

Looking at these questions from the nonpublic school perspective, it seems that the equivalency issue, once addressed, could benefit nonpublic schools because it would result in:

- the clarification of secular objectives universally applied in nonpublic K-12 programs;
- the dissipation of anxiety and tension between public and non-public school authorities;
- the removal of the "political hot potato" which interferes in local school district relationships;
- a better means, through data feedback, to assess a student's academic achievement through comparisons to students in similar schools;
- the emergence of a more cohesive, community-oriented school system at the local school district level which serves its residents better regardless of whether they enroll their children in public or nonpublic school; and
- an improved relationship between nonpublic schools and SED, especially with the creation of a designated office within SED to serve the nonpublic school sector.

The final, if not the most important, message contained in this report is that every child in New York deserves the best possible education. No matter where parents choose to educate their children, the State has one overriding responsibility. It is to assure that upon completion of high school, each child has had an unequivocal opportunity to master basic skills and core knowledge areas. Eventually, today's children become tomorrow's adults...members of New York's diverse "community of people." The State must be sure that the "community" is composed of the best and the brightest; secure that it has provided an unparalleled educational experience to all of its citizens regardless of their public or nonpublic school backgrounds. The existence of educational diversity reflects the State's recognition that it is composed of a highly diverse group of people with differing needs and expectations.

Questions regarding New York's educational diversity, quality and competition for students and funds have generated a whirlwind of discussions within and between the State's public and nonpublic educational sectors. Recognizing that both public and nonpublic education have an important stake in educational renewal, there is a pressing need to examine how these two sectors, in particular the nonpublic school sector, "fit" into renewal efforts. The educational forecast calls for another long stretch of stormy debates centered around educational reform. An integral ingredient necessary to ensure the success of the State's reform movement will be the inclusion of and the attention given to New York's nonpublic elementary and secondary schools.

## **FOOTNOTES**

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11. See footnote 1, p. 3.
12. See footnote 1, p. 2.
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## **APPENDICES**

**APPENDIX A: BASIC EDUCATIONAL DATA SYSTEMS  
(BEDS)**

**APPENDIX B: CHAPTERS 507 AND 508  
OF THE LAWS OF 1974**

**APPENDIX C: CORRESPONDENCE REGARDING  
AGE OF ADMISSION TO KINDERGARTEN**

**APPENDIX D: NONPUBLIC SCHOOL EQUIVALENCY  
SCHOOL VISITATION DISCUSSION GUIDE**

**APPENDIX E: SCIENCE SELF-PAC**

# APPENDIX A

## Basic Educational Data Systems (BEDS)

**1. School Code**

--	--	--	--	--	--	--

**2. School Name**

--

Read Instructions on pages 6-8 carefully before completing this form.

**3.**

### PROFESSIONAL STAFF ASSIGNED TO THIS SCHOOL

Title	Full Time		Part Time	
	Elementary (PK-6)	Secondary (7-12)	Elementary (PK-6)	Secondary (7-12)
Principal or Headmaster				
Assistant Principals				
Supervisors and Department Heads				
Teachers				
Librarians				
Guidance Counselors				
Other				

**4.**

### ENROLLMENT IN THIS SCHOOL

Grade	Total	American Indian or Alaskan Native	Black (not Hispanic Origin)	Asian or Pacific Islander	Hispanic	White (not Hispanic Origin)
Prekindergarten						
Kindergarten ( $\frac{1}{2}$ day)						
Kindergarten (full day)						
First						
Second						
Third						
Fourth						
Fifth						
Sixth						
Ungraded Pupils—Handicapped-Elementary (ages 11 and below)						
Seventh						
Eighth						
Ninth						
Tenth						
Eleventh						
Twelfth						
Ungraded Pupils—Handicapped-Secondary (ages 12 and above)						
Postgraduate						

01

02

05

06

07

08

09

10

5.

### ENROLLMENT IN OTHER LOCATIONS

11

Does the enrollment data reported in item 4 on page 2 include the enrollment of other facilities (i.e., annexes, schools, institutions) under your building's administration?

If "yes," indicate the following:

Yes  No

Name \_\_\_\_\_

Address \_\_\_\_\_

Grades \_\_\_\_\_

Enrollment \_\_\_\_\_

6.

### VIDEO RESOURCES AND USE IN THIS SCHOOL

#### A. Resources

##### 1. Number of videotape players:

- a. Cassette:  $\frac{3}{4}$ " U-Matic Tape .....
- b. Cassette:  $\frac{1}{2}$ " VHS Type .....
- c. Cassette:  $\frac{1}{2}$ " Betamax Type .....
- d. Reel to Reel:  $\frac{1}{2}$ " EIAJ-I.....
- e. Other .....


Check if players are shared with other schools ....

##### 2. Number of operating television receivers in classrooms:

- a. Black and white TV receivers .....
- b. Color TV receivers .....


#### B. Use

##### 1. Number of teachers using TV for instruction:

- a. Regularly (75% or more of a series) .....
- b. Occasionally (once a month or at least 10 programs per year) .....


7.

### LIBRARY MEDIA RESOURCES AVAILABLE IN THIS SCHOOL

12

#### A. Total number of books (as of June 30, 1980) .....

--

Number of book titles (as of June 30, 1980) .....

--

Number of book titles added during 1979-80 .....

--

Number of audiovisual resources (as of June 30, 1980) .....

--

Number of magazine titles subscribed to during 1980-81.....

--

#### B. Is this school participating for the 1980-81 school year in the BOCES shared service program for media services?

Yes  No

8.

### PUBLIC WELFARE

Approximately what percentage of the pupils in this school are members of families whose primary means of support is a public welfare program? (Check one.) (If precise data are not available, provide your best estimate.)

1. <input type="checkbox"/> None	7. <input type="checkbox"/> 51-60%
2. <input type="checkbox"/> 1-10%	8. <input type="checkbox"/> 61-70%
3. <input type="checkbox"/> 11-20%	9. <input type="checkbox"/> 71-80%
4. <input type="checkbox"/> 21-30%	10. <input type="checkbox"/> 81-90%
5. <input type="checkbox"/> 31-40%	11. <input type="checkbox"/> 91-100%
6. <input type="checkbox"/> 41-50%	

9.

### SCHOOL FEEDING PROGRAMS

A. Does this school participate in any of the following special food programs through an annual agreement with the State Education Department or local school district?

National School Lunch Program .....	<input type="checkbox"/>
School Breakfast Program .....	<input type="checkbox"/>
Special Milk Program .....	<input type="checkbox"/>

B. Does this school provide any of the following food programs independent of an annual agreement with the State Education Department or local school district?

Breakfast .....	<input type="checkbox"/>
Lunch .....	<input type="checkbox"/>

C. Are children enrolled in this school recipients of any of the above food programs at a site(s) other than this school?

If yes, indicate location below:

Building Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Building Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

10.

### TYPE OF SCHOOL

Indicate type of school (check all that apply):

Boys only        
 Girls only        
 Coeducational   

Day        
 Boarding or Residential   

11.

### DISTRIBUTION OF GRADUATES

13

If this school had a twelfth grade last year indicate below the distribution of the graduates\* from September 1, 1979 to August 31, 1980:

\* Does not include High School Equivalency Diploma recipients

Total Graduates	Number to Postsecondary in New York State			Number to Postsecondary Outside New York State			Number to Employment	Number to Military Service	Other
	4-Year College	2-Year College	Other Post-secondary	4-Year College	2-Year College	Other Post-secondary			

12.

### DROPOUTS

In grades 9-12, report the number of dropouts between July 1, 1979 and June 30, 1980 ....

13.

### LOCAL DIPLOMA REQUIREMENTS

Subject	Units	Other Subjects	Units
English	_____	_____	_____
Social Studies (including American History)	_____	_____	_____
Mathematics	_____	_____	_____
Science	_____	_____	_____
Health	_____	_____	_____
Electives	_____	Total Number of Units Required	<input type="text"/>

## APPENDIX B

### Chapters 507 and 508 of the Laws of 1974

1394

LAWS OF NEW YORK, 1974

[CHAP.

## CHAPTER 507

**AN ACT** to provide for the apportionment of state monies to certain nonpublic schools, to reimburse them for their expenses in complying with certain state requirements for the administration of state testing and evaluation programs and for participation in state programs for the reporting of basic educational data

Became a law May 23, 1974, with the approval of the Governor. Passed by a majority vote, three-fifths being present

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

**Section 1. Legislative findings.** The legislature hereby finds and declares that:

The state has the responsibility to provide educational opportunity of a quality which will prepare its citizens for the challenges of American life in the last decades of the twentieth century.

To fulfill this responsibility, the state has the duty and authority to evaluate, through a system of uniform state testing and reporting procedures, the quality and effectiveness of instruction to assure that those who are attending instruction, as required by law, are being adequately educated within their individual capabilities.

In public schools these fundamental objectives are accomplished in part through state financial assistance to local school districts.

More than seven hundred thousand pupils in the state comply with the compulsory education law by attending nonpublic schools. It is a matter of state duty and concern that such nonpublic schools be reimbursed for the actual costs which they incur in providing services to the state which they are required by law to render in connection with the state's responsibility for reporting, testing and evaluating.

### § 2. Definitions.

1. "Commissioner" shall mean the state commissioner of education.

2. "Qualifying school" shall mean a nonprofit school in the state, other than a public school, which provides instruction in accordance with section thirty-two hundred four of the education law.

**§ 3. Apportionment.** The commissioner shall annually apportion to each qualifying school, for school years beginning on and after July first, nineteen hundred seventy-four, an amount equal to the actual cost incurred by each such school during the preceding school year for providing services required by law to be rendered to the state in compliance with the requirements of the state's pupil evaluation program, the basic educational data system, regents examinations, the statewide evaluation plan, the uniform procedure for pupil attendance reporting, and other similar state prepared examinations and reporting procedures.

**§ 4. Application.** Each school which seeks an apportionment pursuant to this act shall submit to the commissioner an application therefor, together with such additional reports and documents as the commissioner may require, at such times, in such form and containing such information as the commissioner may prescribe by regulation in order to carry out the purposes of this act.

**§ 5. Maintenance of records.** Each school which seeks an apportionment pursuant to this act shall maintain a separate account or system of accounts for the expenses incurred in rendering the services required by the state to be performed in connection with the reporting, testing and evaluation programs enumerated in section three of this act. Such records and accounts shall contain such information and be maintained in accordance with regulations issued by the commissioner, but for expenditures made in the school year nineteen hundred seventy-three-seventy-four, the application for reimbursement made in nineteen hundred seventy-four pursuant to section four of this act shall be supported by such reports and documents as the commissioner shall require. In promulgating such record and account regulations and in requiring supportive documents with respect to expenditures incurred in the school year nineteen hundred seventy-three-seventy-four, the commissioner shall facilitate the audit procedures described in section seven of this act. The records and accounts for each school year shall be preserved at the school until the completion of such audit procedures.

**§ 6. Payment.** No payment to a qualifying school shall be made until the commissioner has approved the application submitted pursuant to section four of this act.

**§ 7. Audit.** No application for financial assistance under this act shall be approved except upon audit of vouchers or other documents by the commissioner as are necessary to insure that such payment is lawful and proper.

The state department of audit and control shall from time to time examine any and all necessary accounts and records of a qualifying school to which an apportionment has been made pursuant to this act for the purpose of determining the cost to such school of rendering the services referred to in section three of this act. If after such audit it is determined that any qualifying school has received funds in excess of the actual cost of providing the services enumerated in section three of this act, such school shall immediately reimburse the state in such excess amount.

**§ 8. Noncorporate entities.** Apportionments made for the benefit of any school which is not a corporate entity shall be paid, on behalf of such school, to such corporate entity as may be designated for such purpose pursuant to regulations promulgated by the commissioner. A school which is a corporate entity may designate another corporate entity for the purpose of receiving apportionments made for the benefit of such school pursuant to this act.

**§ 9.** This act shall take effect July first, nineteen hundred seventy-four.

## CHAPTER 508

AN ACT to amend a chapter of the laws of nineteen hundred seventy-four, entitled "AN ACT to provide for the apportionment of state monies to certain nonpublic schools, to reimburse them for their expenses in complying with certain state requirements for the administration of state testing and evaluation programs and for participation in state programs for the reporting of basic educational data", in relation to its applicability

Became a law May 23, 1974, with the approval of the Governor. Passed by a majority vote, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section nine of a chapter of the laws of nineteen hundred seventy-four, entitled "AN ACT to provide for the apportionment of state monies to certain nonpublic schools, to reimburse them for their expenses in complying with certain state requirements for the administration of state testing and evaluation programs and for participation in state programs for the reporting of basic educational data" is hereby renumbered to be section ten, and a new section, to be section nine, is hereby added thereto, to read as follows:

§ 9. In enacting this chapter it is the intention of the legislature that if section seven or any other provision of this act or any rules or regulations promulgated thereunder shall be held by any court to be invalid in whole or in part or inapplicable to any person or situation, all remaining provisions or parts thereof or remaining rules and regulations or parts thereof not so invalidated shall nevertheless remain fully effective as if the invalidated portion had not been enacted or promulgated, and the application of any such invalidated portion to other persons not similarly situated or other situations shall not be affected thereby.

§ 2. This act shall take effect July first, nineteen hundred seventy-four.

## APPENDIX C

### Correspondence Regarding Age of Admission to Kindergarten

THE UNIVERSITY OF THE STATE OF NEW YORK  
THE STATE EDUCATION DEPARTMENT  
ALBANY, NEW YORK 12234

OFFICE OF THE COUNSEL

June 8, 1982

Mr. Lionel R. Meno  
Superintendent of Schools  
City School District of the  
City of Syracuse  
409 West Genesee Street  
Syracuse, New York 13202

Dear Mr. Meno:

Thank you for your letter of May 20, 1982 concerning admission to public school of pupils who have attended a private kindergartner..

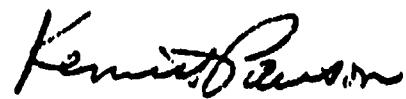
A pupil who has attended a kindergarten not registered by the State Education Department need not be admitted to first grade by the public school district the following year. It is only in the instance of a registered kindergarten that a school district is required to give effect to the Department's approval of the school by considering the private school's kindergarten to be the equivalent of the school district's own kindergarten program.

In specific response to the two questions you pose, there is no minimum age for admission to an unregistered kindergarten, and no authority for a school district to have an age requirement for admission to first grade (Op. Counsel Educ. Dept. No. 75, 1 Ed. Dept. Rep. 775, 776; Matter of Weinstein, 76 State Dept. Rep. 154, 155). A school district has discretion to determine grade level placement of any child, and may, upon evaluation of the child's readiness, admit to first grade a child who has attended an unregistered kindergarten or indeed no kindergarten at all.

The recent amendment of section 125.9 of the Commissioner's Regulations eliminated the former discretion of a registered kindergarten to accept a student up to thirty days younger than the minimum age for admission to the public schools of the district of residence. There is no such limitation upon a school

which is not registered by the Department, but as indicated above there is no requirement that a public school district accord any particular status to a pupil who has completed a year's attendance at a non-registered kindergarten before seeking admission to the public schools.

Very truly yours,

  
Kenneth Pawson  
Senior Attorney

KP:se

CITY SCHOOL DISTRICT  
409 WEST GENESEE STREET  
SYRACUSE, NEW YORK 13202

SUPERINTENDENT OF SCHOOLS

May 20, 1982

Dr. Robert Stone  
Counsel and Deputy Commissioner  
for Legal Affairs  
The State Education Department  
116 Education Building  
Washington Avenue  
Albany, New York 12234

Dear Dr. Stone:

In the past 10 years, we have witnessed a significant increase in the number of local private kindergartens. In several instances, children have been enrolled in these kindergartens who did not become five years of age by December 1 of the year in which they were enrolled. Upon successful completion of kindergarten, these same children were then eligible by law to enter first grade in our public schools. This procedure has been an obvious yet successful strategy to circumvent our school district policy, which requires a child to be five years of age on or before December 1 of the year in which the child is enrolled.

In seeking relief from what we see as an unsound educational practice, we noted that Section 125.9 of the Regulations of the Commissioner requires that only voluntarily registered kindergartens need comply with the regulation that the age of admission to kindergarten must conform with the policy established by the school district in which the private school is located. It would seem that any non-registered private kindergarten is not obliged to conform to the said Section 125.9. In fact, carried to an extreme, it would appear that a child could be enrolled in a non-registered private kindergarten at age three and, upon successful completion of the approved curriculum, be eligible to enroll in first grade in our public schools.

Specifically then, I request a legal opinion on the following questions:

1. Is there an age below which a non-registered private kindergarten may not legally enroll a child in its program?
2. Is there an age below which public schools may legally deny a child enrollment in first grade even though the child has successfully completed kindergarten in a private unregistered school?

Sincerely yours,



Lionel R. Meno  
Superintendent of Schools

LRM/t

## APPENDIX D

### Nonpublic School Equivalency School Visitation Discussion Guide



BOARD OF  
COOPERATIVE EDUCATIONAL SERVICES  
SECOND SUPERVISORY DISTRICT - SUFFOLK COUNTY  
201 Service Highway, Patchogue, New York 11772

NONPUBLIC SCHOOL EQUIVALENCY'  
SCHOOL VISITATION  
DISCUSSION GUIDE

THIS GUIDE IS INTENDED FOR USE BY LOCAL SCHOOL DISTRICT AUTHORITIES TO FACILITATE NONPUBLIC SCHOOL EDUCATIONAL PROGRAM REVIEW IN DIRECTING FOCUS ON MAJOR PROGRAM ELEMENTS DURING AN ON-SITE VISIT. IF DESIRED, AND IN ORDER TO EXPEDITE THE REVIEW PROCESS, A COPY OF THIS GUIDE MIGHT BE FURNISHED TO THE NONPUBLIC SCHOOL IN ADVANCE OF A VISIT.

NAME & ADDRESS OF SCHOOL \_\_\_\_\_

\_\_\_\_\_ TELEPHONE \_\_\_\_\_

DIRECTOR \_\_\_\_\_ TEACHER(S) \_\_\_\_\_

DATE OF VISIT \_\_\_\_\_ CLASS(ES) \_\_\_\_\_

VISITORS \_\_\_\_\_

#### I. ADMINISTRATION

NOTES

1. KINDERGARTEN ACCEPTANCE AGE POLICY:

1.

2. SCHOOL ENROLLMENT (INCLUDE CLASS SIZE BY SECTIONS):

2.

PRE-K    K    1    2    3    4    5    6    TOTAL   

3. KINDERGARTEN AGE RANGE(YOUNGEST-OLDEST) AS OF 9/1:

3.

   YRS.    MO. TO    YRS.    MO.

4. STUDENT CLASS ROSTERS AVAILABLE? YES    NO   

4.

5. LENGTH OF SCHOOL DAY:    HRS.    MIN.

5.

A. START    END   

B. ORGANIZATIONAL PATTERN (I.E.,  $\frac{1}{2}$  DAY FULL DAY ETC.):

6. LENGTH OF SCHOOL YEAR:    DAYS

6.

OPENING DATE   

7. SCHOOL CALENDAR AVAILABLE? YES    NO   

7.

8. ALL CHILDREN ENROLLED IMMUNIZED? YES    NO   

8.

9. PHYSICAL EXAMS PRIOR TO ENROLLMENT? YES    NO   

9.

10. HEALTH SERVICES PROVIDED:

10.

   PHYSICAL INSPECTION    VISION TESTING

   FIRST AID    SCOLIOSIS TESTING

   AUDITORY TESTING    OTHER\*

\*DESCRIBE   

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**ADMINISTRATION - CONTINUED****NOTES**

11. HANDICAPPED CHILDREN SERVED? YES \_\_\_\_\_ NO \_\_\_\_\_

11.

12. FOLLOWING REPORT COPIES ON FILE WITH LOCAL SCHOOL DISTRICT:

12.

CERT. OF OCCUPANCY	YES _____	NO _____
HEALTH DEPT. INSP.	YES _____	NO _____
FIRE INSPECTION	YES _____	NO _____
FLOOR PLAN SKETCH	YES _____	NO _____

**III. STAFF (REFER TO APPLICATION FOR DETAILS)**

1. ADMINISTRATIVE STAFF CERTIFIED? YES \_\_\_\_\_ NO \_\_\_\_\_

1.

AREA(S) OF CERTIFICATION \_\_\_\_\_

\_\_\_\_\_

2. ALL TEACHING STAFF CERTIFIED? YES \_\_\_\_\_ NO \_\_\_\_\_

2.

3. STAFF ROSTER AVAILABLE? YES \_\_\_\_\_ NO \_\_\_\_\_  
(ROSTER SHOULD INCLUDE AREAS OF CERT.)

3.

4. TEACHER ASSISTANTS TRAINED/CERTIFIED? YES \_\_\_\_\_ NO \_\_\_\_\_

4.

5. SPECIAL SUBJECT STAFF (SPEECH, ART, PE, MUSIC, ETC.)

5.

UTILIZED? YES \_\_\_\_\_ NO \_\_\_\_\_

\_\_\_\_\_

6. IN-SERVICE TRAINING OPPORTUNITIES PROVIDED?

6.

YES \_\_\_\_\_ NO \_\_\_\_\_

**CHECKLIST CODE (INSERT NUMBER AS BEST DESCRIPTOR)**

1. ABOVE AVERAGE	3. NEEDS IMPROVEMENT
2. AVERAGE/ADEQUATE	4. NOT EVIDENT

**III. FACILITIES**

1. ADEQUATE CLASSROOM SIZE

1.

( K:33 SQ. FT./CHILD  
1-6: 300 SQ. FT./CLASS SUGGESTED )

[\*SIZE(S) SQ. FT. \_\_\_\_\_ APPROX.]

\*DIMENSION EACH CLASSROOM; GIVE LENGTH &amp; WIDTH

2. CLASSROOM LIGHTING (ARTIFICIAL/NATURAL)

2.

3. CLASSROOM HEATING/VENTILATION

3.

4. CLASSROOM MAINTENANCE

4.

5. CLASSROOM ADEQUATELY, APPROPRIATELY EQUIPPED  
(I.E., CHALKBOARD, DESKS, CHAIRS, SHELVING, ETC.)

5.

6. AUDITORIUM/GROUP MEETING AREA

6.

7. CAFETERIA/LUNCHROOM AREA

7.

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154

158

FACILITIES - CONTINUED

8. FOOD PREP. CAPABILITIES (KITCHEN)  
FOOD SERVED? YES \_\_\_\_\_ NO \_\_\_\_\_

9. ADEQUATE LAVATORY, DRINKING FACILITIES

10. INDOOR GYMNASIUM/PLAY AREA

11. OUTDOOR PLAY AREA - WELL-EQUIPPED, SAFE

12. TWO (2) REMOTE EXITS IN EACH CLASSROOM  
( WINDOW = 6 SQ. FT.)

13. ADEQUATE STORAGE AREAS (CLOTHING, EQUIPMENT)

14. ADEQUATE ADMINISTRATIVE, SUPPORT SPACE

IV. CURRICULUM AND INSTRUCTION

1. READING: IS A COMMERCIAL PROGRAM USED?

YES \_\_\_\_\_ NO \_\_\_\_\_

WHAT PROGRAM(S)? \_\_\_\_\_

IS LOCALLY DEVELOPED PROGRAM USED?

YES \_\_\_\_\_ NO \_\_\_\_\_

IS CURRICULUM DOCUMENT AVAILABLE?

YES \_\_\_\_\_ NO \_\_\_\_\_

2. MATHEMATICS: IS A COMMERCIAL PROGRAM USED?

YES \_\_\_\_\_ NO \_\_\_\_\_

WHAT PROGRAM(S)? \_\_\_\_\_

IS LOCALLY DEVELOPED PROGRAM USED?

YES \_\_\_\_\_ NO \_\_\_\_\_

IS CURRICULUM DOCUMENT AVAILABLE?

YES \_\_\_\_\_ NO \_\_\_\_\_

3. LANGUAGE ARTS: IS A COMMERCIAL PROGRAM USED?

YES \_\_\_\_\_ NO \_\_\_\_\_

IS LOCALLY DEVELOPED PROGRAM USED?

YES \_\_\_\_\_ NO \_\_\_\_\_

IS CURRICULUM DOCUMENT AVAILABLE?

YES \_\_\_\_\_ NO \_\_\_\_\_

8.

9.

10.

1.

2.

3.

001-100-11/82-498C

CURRICULUM & INSTRUCTION-CONTINUED

NOTES

4. SCIENCE: IS A COMMERCIAL PROGRAM USED?

YES \_\_\_\_\_ NO \_\_\_\_\_

WHAT PROGRAMS? \_\_\_\_\_

IS LOCALLY DEVELOPED PROGRAM USED?

YES \_\_\_\_\_ NO \_\_\_\_\_

5. HEALTH: IS DETAILED CURRICULUM AVAILABLE?

YES \_\_\_\_\_ NO \_\_\_\_\_

6. SAFETY: IS DETAILED CURRICULUM AVAILABLE?

YES \_\_\_\_\_ NO \_\_\_\_\_

ARE REQUIRED FIRE, BUS & SAFETY DRILLS SCHEDULED?

YES \_\_\_\_\_ NO \_\_\_\_\_

(RECORDS KEPT ON DRILL DATES? YES \_\_\_\_\_ NO \_\_\_\_\_)

7. SCHEDULED PHYSICAL EDUCATION ACTIVITIES?

YES \_\_\_\_\_ NO \_\_\_\_\_

IS DETAILED CURRICULUM AVAILABLE?

YES \_\_\_\_\_ NO \_\_\_\_\_

8. SCHEDULED MUSICAL ACTIVITIES?

YES \_\_\_\_\_ NO \_\_\_\_\_

IS DETAILED CURRICULUM AVAILABLE?

YES \_\_\_\_\_ NO \_\_\_\_\_

9. SCHEDULED ART INSTRUCTION? YES \_\_\_\_\_ NO \_\_\_\_\_

IS DETAILED CURRICULUM AVAILABLE?

YES \_\_\_\_\_ NO \_\_\_\_\_

10. OVERALL INSTRUCTIONAL ATMOSPHERE

10.

11. TEACHER/STUDENT RAPPORT

11.

12. APPARENT TEACHER EFFECTIVENESS

12.

V. TESTING, RECORD-KEEPING, REPORTING

1. KINDERGARTEN SCREENING PLAN

1.

DESCRIBE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

001-100-11/82-498D

TESTING, RECORD-KEEPING, REPORTING-CONTINUED

NOTES

2. SYSTEM OF RECORD-KEEPING IN EVIDENCE

2.

3. DAILY STUDENT SCHEDULE IN EVIDENCE

3.

4. PUPIL ATTENDANCE RECORDED DAILY

4.

5. HEALTH RECORDS MAINTAINED

5.

6. NORM-REFERENCED TESTS

6.

A. READINESS (I.E., METROPOLITAN)

6A.

YES \_\_\_\_\_ NO \_\_\_\_\_

TEST(S) ADMINISTERED \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6B.

B. EARLY IDENTIFICATION

YES \_\_\_\_\_ NO \_\_\_\_\_

TEST(S) ADMINISTERED \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6C.

C. BASIC CONCEPTS

YES \_\_\_\_\_ NO \_\_\_\_\_

TEST(S) ADMINISTERED \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6D.

D. INTELLIGENCE TESTING

YES \_\_\_\_\_ NO \_\_\_\_\_

TEST(S) ADMINISTERED \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6E.

E. ACHIEVEMENT TESTING

YES \_\_\_\_\_ NO \_\_\_\_\_

TEST(S) ADMINISTERED \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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7. GRADING SYSTEM: (NUMERICAL \_\_\_\_\_, ALPHA \_\_\_\_\_,  
ANECDOT. \_\_\_\_\_)

7.

8. PARENTAL INVOLVEMENT, REPORTING SYSTEM

8.

DESCRIBE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. SCHOOL DISTRICT RECORD TRANSMITTAL PLAN

9.

DESCRIBE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10.

**VI. INSTRUCTIONAL EQUIPMENT**

A. KINDERGARTEN

1. BUILDING BLOCKS (SOLID, HOLLOW), STORAGE
2. TOYS AND GAMES
3. WHEELED RIDING TOYS
4. CRAFT MATERIALS
5. CARPENTER'S BENCH, TOOLS, SUPPLIES
6. HOUSEKEEPING EQUIPMENT
7. FINGERPAINTING, ART MATERIALS
8. POCKET CARDS
9. EXPERIENCE CHART, FRAMES
10. EASELS

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

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**INSTRUCTIONAL EQUIPMENT - CONTINUED****NOTES**

11. PLAY SINK, WATER TABLE
12. SCIENCE EQUIPMENT, MATERIALS
13. SANDBOX (INDOOR/OUTDOOR)
14. PIANO
15. RHYTHM BAND INSTRUMENTS
16. RECORD PLAYER, RECORDS
17. MUSIC SUPPLIES
18. 16MM MOTION PICTURE PROJECTOR, FILMS
19. SLIDE/TAPE PROJECTOR, SLIDES/TAPES
20. OTHER \_\_\_\_\_

---

- 11.
- 12.
- 13.
- 14.
- 15.
- 16.
- 17.
- 18.
- 19.
- 20.

**VII. INSTRUCTIONAL MATERIALS****A. KINDERGARTEN**

1. MANIPULATIVES
2. READINESS MATERIALS
3. LIBRARY BOOKS
4. WORKBOOKS
5. STORY, PICTURE BOOKS
6. TEACHER-MADE MATERIALS
7. OTHER \_\_\_\_\_

---

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

**VIII. GENERAL**

1. OVERALL INSTRUCTIONAL ATMOSPHERE
2. TEACHER/STUDENT RAPPORT
3. GENERAL COMMENTS, IMPRESSIONS

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001-100-11/02-498G

**GENERAL - CONTINUED**

**4. EVIDENCE OF INSTRUCTIONAL EFFECTIVENESS**

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**IX. TRANSPORTATION PROVISIONS (CHECK)**

OWNER-OPERATED

SCHOOL DISTRICT

OWNER-CONTRACTED

PARENT

OTHER

**NOTES**

EVALUATOR: \_\_\_\_\_

TITLE: \_\_\_\_\_

BIRIPPA  
11/82

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160

164

## APPENDIX E

### Science Self-Pac

#### Science 1-12 (Second Edition)

A study of the sciences on the first grade level - the days of creation, plants, animals, weather seasons, the earth, the sky, our bodies, and our senses. Tapes required.

- 1 A study of the seven days of creation.
- 2 A study of the care of the body and teeth.
- 3 A study of good health: growing, proper foods, rest and exercise.
- 4 A study of plants: seeds, roots, stems, leaves, vegetables, fruits, grasses, and trees.
- 5 A study of animals: bees, fish, frogs, etc.
- 6 A study of animals: snakes, birds, and dogs.
- 7 A study of ears and hearing.
- 8 A lesson on eyes and seeing.
- 9 A lesson about the earth: including its shape, rotation, soil, water.
- 10 A study of air, wind, and breathing.
- 11 A study of the seasons and weather.
- 12 A lesson on the sky, sun, moon, and stars.

#### RESOURCE MATERIALS REQUIRED:

Science Tapes 1-6, Supervisor Guide (1-6)  
Tapes 7-12 recommended

#### Science 13-24

A study of the various sciences on the second level. Topics include health, foods, protection, the body, plants, force, motion, the earth - geography, seasons, and the sun, stars, and moon. Tapes recommended.

- 13 A study of the characteristics of living and not living things as created by God.
- 14 A study of the body: the mouth, stomach, blood, heart, lungs, bones, muscles, skin, and hair.
- 15 A study of protection: shelter, clothing, protection by God and parents.
- 16 A study of the basic food groups.
- 17 A lesson about plants: flowers, seeds, fruit, and trees.
- 18 Another lesson about plants: mushrooms, mosses, and grasses.

#### Science 13-24 (continued)

- 19 A lesson about force: pushes and pulls, wheels, seesaws, and big and little forces.
- 20 A lesson about motion: moving and stopping, hard and soft forces, etc.
- 21 A lesson about the earth - land and water, mountains and hills, plains, oceans, lakes and rivers.
- 22 A study of weather and the seasons.
- 23 A study of the sun and stars.
- 24 A study of the moon: craters, how the moon shines, going to the moon.

#### Science 25-36

A study of scientists and science including the senses, units of measure, animals and their needs, gravity, heat, matter, geology, and outer space. The first PACE is an introduction to the three main types of scientists: life scientists, earth scientists, and physical scientists. Tapes recommended.

- 25 A lesson about the three fields of science, life, earth, and physical, and the scientists in each field.
- 26 A lesson about breathing: the nose and mouth, larynx, lung tubes, lungs, oxygen, and diaphragm, etc.
- 27 The five senses: sight, hearing, smell, taste, and touch.
- 28 A study of different animal homes and habitats: water, land, cold and warm area.
- 29 A study of animal needs.
- 30 An introduction of the units of measure: length, weight, and time.
- 31 A study of gravity and other forces: friction, centrifugal force, air pressure, mass and distance, and weight.
- 32 A lesson about heat: molecular movement, temperature and temperature scales, heat transfer, and sources of heat.
- 33 A lesson about matter: definition, atoms, molecules, states of matter, and metals.
- 34 A study of the earth's geology: the crust, mantle, outer shell, inner shell, kinds of rocks and minerals, and soil.

Science 25-36  
(continued)

35 A study of surface changes on the earth: the Genesis Flood, volcanoes, earthquakes, landslides, avalanches, glaciers, and tidal waves.

36 A lesson about outer space: stars, constellations, galaxies, planets. the moon, comets, asteroids, meteors, and space travel.

Science 37-48

This course increases the student's knowledge of biology and physical science through a more detailed study of such topics as health, plants, light, sound, the earth, and space. Tapes recommended.

37 A study of living things and their characteristics.

38 A study of health and hygiene: the teeth, throat, eyes, nose, ears.

39 A study of blood: plasma, cells, functions of the blood, lymph, how the body makes blood, blood diseases, and the heart.

40 A study of the digestive system: salivary glands, stomach, duodenum, liver and pancreas, intestines, appendix, kidneys and bladder.

41 A study of the atom: (microscopes, description of the atom, elements, mixtures, compounds) and the cell (parts, plant and animal, and one-celled protists).

42 An examination fo plant habitats: water plants, land plants, cold and warm area plants.

43 A study of the needs of plants, (oxygen, carbon dioxide, water, light, food, warmth), and parts of plants (flowers, leaves, stems, and roots).

44 A lesson about light: origin of light, speed of light, reflection, lenses, colors, and prisms.

45 A lesson about sound: sound waves, the vocal cord, the ear, pitch, loudness, quality, speed, and echoes.

46 A lesson about the earth: structure, rocks and minerals, fossils and fuels, latitude and longitude.

47 A separate lesson about rocks and minerals.

48 Outer space: the solar system, the sun, solar wind, and the planets (Mercury, Venus, and Mars).

Science 49-60

This course expands the student's knowledge of biology, physical science, chemistry, and geology. New topics include microscopic plants and animals, animals without backbones, magnetism, simple machines, states and properties of matter, and geological theories. Tapes recommended.

49 A study of the creation, men's theories of creation, and the order of creation.

50 A study of bones and muscles.

51 Microscopic plants and animals: protozoa, fungi, viruses, bacteria.

52 A lesson about animals without backbones: types of body structure, symmetry, invertebrate body systems, protozoa, sponges, and coelenterates.

53 Another lesson about spineless animals: worms, echinoderms, mollusks, and arthropods.

54 A study of magnetism: definition, poles, attraction, repulsion, magnetic fields, magnetic induction, and compasses.

55 Simple machines: inclined plane, lever, pulley, wheel and axle, wedge and screw.

56 The states of matter: atoms, molecules, elements, solids, liquids, and gases.

57 The properties of matter: mass and weight, volume, density, temperature and heat, pressure, metals, nonmetals, and crystals.

58 A study of geology: the Great Flood (Genesis), the geologist, the uniform theory, the catastrophe theory.

59 A study of measurements: length, time, mass, area, volume, and speed.

60 The solar system: the sun, the planets, asteroids, comets, and meteors.

Science 61-72

This course compares the facts of creation with fallacies of the many theories of evolution. Topics include theories of life, study of the skin, animals with backbones,

energy, electricity, laws of motion, archaeology, and the atmosphere. Tapes recommended.

- 61 The theories of life: Lamarck, Darwin, Mendel, Johannsen, Devires, Weismen, Pasteur, abiogenesis, and panspermia (all theories shown to be invalid).
- 62 A study of the skin: its layers, nerve endings, capillaries, hair and nails, growths on the skin and glands.
- 63 A study of growth of living things: photosynthesis, metabolism, carbohydrates, protein, fats, enzymes, and vitamins.
- 64 A study of animals with backbones: symmetry segmentation, division, the various body systems, and classes of vertebrates.
- 65 Another study of animals with backbones: birds and mammals.
- 66 A study of energy: definition, forms, and kinds.
- 67 A lesson about static and current electricity.
- 68 The laws of motion: terms, law of gravitation, mass and distance, inertia, acceleration, action and reaction.
- 69 A study of archaeology: definition, value of archaeology, ways of digging, archaeology and Bible study, and the Dead Sea scrolls.
- 70 A study of conservation: wasting natural resources, conserving the natural resources of soil, water, vegetation, animal life, minerals and fuels.
- 71 A study of the atmosphere: air, humidity, smog, air pressure, atmosphere layers, and weather.
- 72 A study of the order of the universe: history of astronomy, tools of astronomy, light year, solar system, constellations, and galaxies.

#### Science 73-84

This course is a study of the field of life science including biology, zoology, and ecology. This is the student's first opportunity to view the life system as a whole, and thoroughly refutes the theory of evolution.

- 73 An introduction to the scientific method, the characteristics of living

#### Science 73-84 (Continued)

- things, the microscopic and cell theory.
- 74 An introduction to the manner in which all living things are classified.
- 75 A study of protists and plants: characteristics and types of protists (virus, bacteria, and amoeba), characteristics and kinds of plants.
- 76 A study of invertebrates: sponges, coelenterates, flatworms, rotifers, mollusks, starfish, arthropods, and insects.
- 77 A study of chordates and simple vertebrates, agnatha, chondrichthyes, osteichthyes, amphibia, and reptilia.
- 78 A study of the characteristics of selected orders of birds and mammals.
- 79 A study of photosynthesis and the community of life: biogenesis, cell division, and the materials, processes and results of photosynthesis.
- 80 A study of genetics: chromosomes, the genetic code (DNA-RNA system), Mendelian principles, and applied genetics.
- 81 A study of the structure and behavior of man.
- 82 A study of diseases: early theories, germ theory, kinds of diseases, and man's defenses against disease.
- 83 A study of ecology: the interrelationship of living things, balance of nature, land biomes, and marine biomes.
- 84 A lesson in conservation: history and goals of conservation, types of pollution, and the energy crisis.

#### Science 85-96

A study in the field of earth science. Topics include the lithosphere, hydrosphere, atmosphere, meteorology, seismology, topography, mineralogy, and ecology. Included in earth science is a Scriptural view of the earth's past, present, and future condition.

- 85 An introduction to the field of earth science, the earth in space, the earth's sun and moon, gravitation, energy, and eclipses.
- 86 A study of the lithosphere: rock structures, layers, types, land masses and shelves, and forces.

Science 85-96  
(continued)

- 87 A study of the hydrosphere: oceans, lakes, moving water, ice, and the water cycle.
- 88 A study of the atmosphere: layers, values, oxygen cycle, nitrogen cycle, temperature, humidity, and pressure.
- 89 A study of meteorology: temperature, wind, moisture, pressure, air masses, forecasting, climates, and climate changes.
- 90 A study of seismology: faults, scope, earthquakes, volcanoes, Tsunamis.
- 91 A study of topography and mapping: surface features, heights, depressions, flat areas, unique locales, and surveys.
- 92 A study of mineralogy: minerals, rocks, crystals, ores and metals, fuels, and mining processes.
- 93 A study of the planet earth: seasons, the moon with its tides and lunar cycle, natural materials available for food, energy, construction, or pleasure.
- 94 A study of ecology: environmental problems in air, water, and land; remedies; and recommendations.
- 95 An examination of the Scriptural view of the world: Creation, the Flood, the Present and the Future of the world.
- 96 A study of the origin of the universe: the Bible account, man's erroneous theories, and the limits of science.

Science 97-108\*  
Physical Science

A study of physical science. Using a Christian resource book on physical science, the student will learn of atomic structure, chemistry, and physics. Prerequisite: Algebra 1 (PACE 97-108).

- 97 An introduction to the world of physical science: the limitations of science, the Bible, and scientific method and measurement.
- 98 A study of matter and chemistry - composition and states of matter, mixtures, solutions, colloids, kinetic-molecular theory, and gas laws.

Science 97-108\*  
(continued)

- 99 Matter and atomic structure - ionic, covalent, and metallic bonding; acids, bases, and pH; formulas, equations, and reactions; and the Periodic Chart.
- 100 A further study of descriptive chemistry: active metals, chemistry of carbon and silicon, oxides of carbon and silicon, and metallurgy.
- 101 A further study of descriptive chemistry: nitrogen and phosphorus, sulphur, the halogens, and the rare gases.
- 102 Water and its elements: properties and chemistry of water, oxygen and hydrogen, pollution and chemistry.
- 103 Mechanics, machines, and motion - simple machines, gravitation, Newton's laws of motion.
- 104 A study of heat: temperature, expansion, heat flow, thermodynamics, conservation, entropy, and heat and evolution.
- 105 Electricity and magnetism: static electricity, current electricity, and magnetism.
- 106 Wave theory: visible light, electromagnetic spectrum, wave motion, standing waves, and interference.
- 107 Another study of waves: the origination, propagation, speed, detection of sound, and musical instruments and acoustics.
- 108 A study of twentieth-century science: natural and artificial radioactivity, and space exploration.

REQUIRED RESOURCE BOOKS:

Physical Science for Christian Schools. Emmett L. Williams, and George Mulfinger, Jr. (available from A.C.E.)

\*Student must be able to work Algebra before attempting this course.

Science 109-120  
Biology

A study of biology. This course utilizes the work of the Creation Research Society

and expands upon it in the correlating PACE.

- 109 An introduction to the history of biological science and the scientific method.
- 110 An introduction to the chemistry of biology: inorganic chemistry, organic chemistry, and biochemistry.
- 111 A study of cell structures and genetics: cell, biogenesis, heredity, and embryology.
- 112 A study of classification: its history, systems, and problems.
- 113 A study of the protista: algae, molds, fungi, viruses, bacteria, and protozoa.
- 114 A study of plants: lower plants (mosses, etc.), higher plants (ferns, seed plants, flowering plants), photosynthesis, and plant organs.
- 115 A study of invertebrates: coelenterata, platyhelminthes, mollusca, annelida, echinodermata, and arthropoda.
- 116 A study of the vertebrates: agnatha, chondrichthyes, osteichthyes, amphibia, reptilia, aves, and mammalia.
- 117 A study of the human body systems: the integumentary, skeletal, muscular, and nervous systems.
- 118 A continuance of the study of the human body systems: circulatory, respiratory, digestive, excretory and reproductive systems.
- 119 A study of the facts of creation and a critical examination of the theory of evolution.
- 120 A study of ecology and conservation - environment, habitats, community, natural cycles, environmental problems, and solutions.

#### REQUIRED RESOURCE BOOKS:

Biology: A Search for Order in Complexity.  
John N. Moore, and Harold Schultz Slusher.

Science 121-132  
Chemistry

A study of chemistry. Through the use of a standard chemistry resource book, the student is given a solid introduction to chemistry. The corresponding PACE's view the material from a Christian perspective and

provide the student with the necessary study helps.

- 121 An introduction to chemistry: the scope of science, matter and energy, measurement and composition of matter.
- 122 An examination of atomic structure: arrangement of electrons, and periodic law.
- 123 A study of bonding and chemical composition: bonds (ionic, covalent), composition (writing formulas, percentage composition, and empirical formula).
- 124 A study of chemical equations and the gas laws: kinetic-molecular theory, standard temperature and pressure, Charles' Law, Boyle's Law.
- 125 A study of gases, liquids, solids, and solutions: molecular composition of gases, Avogadro's principle, gas volume problems, solution process.
- 126 A study of acids, bases, and salts: ionization, hydration, conduction, titration.
- 127 The chemistry of carbon: carbon dioxide, carbon monoxide, and hydrocarbons (halogenations, alcohols, ethers, aldehydes, ketones, esters, etc.)
- 128 Chemical kinetics and equilibrium: the energy of reaction, reaction rates, reaction mechanism, and chemical equilibrium.
- 129 A study of oxidation-reduction, and the alkali metals: lithium, sodium, potassium, rubidium, cesium, francium.
- 130 A study of metals and metalloids - Group II metals, transition metals (iron, copper, zinc), aluminum; and metalloids (boron, silicon, arsenic, etc.)
- 131 A study of nitrogen and sulphur and their compounds
- 132 The halogens and radioactivity: flourine, chlorine, bromine, iodine, and natural and artificial radioactivity.

#### REQUIRED RESOURCE BOOKS:

Modern Chemistry. H. Clark, Metcalfe, John E. Williams, and Joseph F. Castka. \*Prerequisite: Biology, Physical Science, & Algebra 1

A study of modern physics. Through the aid of an established resource book and corresponding PACE the student is taught the principles of physics.

- 133 An introduction to the terminology of physics, scientific method and notation.
- 134 An introduction to problem solving and measurement: diagrams, equations, trigonometry, vector analysis, and measurements.
- 135 The properties of matter: heat and energy, phases of matter, electric current, electrochemistry, and super conductivity.
- 136 A study of kinematics: velocity and speed, acceleration, circular motion, harmonic motion, and falling bodies and projectiles.
- 137 A study in dynamics: inertia, Newton's laws of motion, rotational motion, and conservation of momentum.
- 138 A continued study in dynamics: universal gravitation, equilibrium, energy, power, work and efficiency, kinetic and potential energy, and relativity.
- 139 Wave motion and sound: pulse, periodic and standing waves, properties of sound waves.
- 140 Light and optics: properties of light, wave nature, electromagnetic radiation, color, radar, and Doppler effect.
- 141 A study of electrostatics and circuits: electrical charge, conduction, induction, Coulomb's law, electric field, electric potential, conservation of charge, and capacitance.
- 142 Magnetism: magnetic fields and poles, electromagnetism, Faraday's laws, and the earth's magnetism.
- 143 A study of electrical applications - Ohm's law, circuit theory, meters, generators and motors, transformer and induction coils, inductance, capacitance, power, impedance, and AC circuits.
- 144 A study of atomic physics: nucleus, nuclear reactions, fission, fusion, cosmic rays, and particles.

## REQUIRED RESOURCE BOOKS:

Physics: A Basic Science. Frank L. Verwiebe, Gordon E. Van Hooft, and Bryant W. Saxon.

\*Prerequisite: Algebra 1, Geometry

**PUBLISHED REPORTS OF THE TASK FORCE ON CRITICAL PROBLEMS**

Oil - It Never Wears Out. It Just Gets Dirty. A Report on Waste Oil. October, 1974. 39 pages.

Insurance and Women. October, 1974. 30 pages.

The Other Side of Crime...The Victim. January, 1975. 18 pages.

No Deposit, No Return... A Report on Beverage Containers. February, 1975. 106 pages and Appendices.

Subsistence or Family Care...A Policy for the Mentally Disabled. March, 1975. 37 pages and Appendices.

"...But We Can't Get A Mortgage!" Causes and Cures. May, 1975. 61 pages and Appendices.

Productivity. October, 1975. 107 pages.

One in Every Two...Facing the Risk of Alcoholism. February, 1976. 101 pages.

Small Business in Trouble. March, 1976. 50 pages.

The Three Billion Dollar Hurdle...Information for Financing Education. April, 1976. 66 pages.

Vital Signs...Sustaining the Health of Tourism. (A Report on Highway Advertising Signs). June, 1976. 83 pages and Appendices.

Administrative Rules...What is the Legislature's Role? June, 1976. 31 pages.

Promoting Economic Development...Rebuilding the Empire Image. October, 1976. 44 pages and Appendices.

Sunset...It's Not All Rosy. (A Report on a New Approach to Legislative Oversight). April, 1977. 88 pages and Appendix.

Preventive Care...Funding Private Medical Schools in New York. April, 1977. 21 pages.

Family Court...The System That Fails All. May, 1977. 105 pages and Appendices.

Higher Education Service Corporation and Tuition Assistance Problems. August, 1977. 38 pages and Appendices.

Accused and Unconvicted...A Brief on Bail Practices. January, 1978. 77 pages.

Office of Business Permits...A Business Permit Assistance Program. March, 1978. 79 pages.

Which Way for Our Waterways? A Report on the New York State Barge Canal and the Upstate Ports. June, 1978. 112 pages.

The Popular Interest versus the Public Interest...A Report on the Popular Initiative. May, 1979. 83 pages.

Old Age and Ruralism...A Case of Double Jeopardy. May, 1980. 260 pages.

The 1980 Census...Where Have All the People Gone? November, 1980. 50 pages.

The Economic Eclipse of New York State...The Shadow is Passing. March, 1981. 128 pages.

E+S<sup>2</sup>...Energy in Schools Costs Too Much. June, 1982. 182 pages.

Bolstering New York State's Human Services...ANY VOLUNTEERS? October, 1982. 134 pages.

A Report on the Problems of New York State's Beginning Farmers...FOOD FOR THOUGHT. March, 1983. 136 pages.